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Legal study on policing and human rights standards

internationally and in three countries of the global south (South Africa, Philippines and Liberia)

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DIGNITY Publication Series on
Torture and Organised Violence
Praxis Paper

#18

LEGAL STUDY ON POLICING AND HUMAN RIGHTS STANDARDS

Internationally and in three countries of the global south (South Africa, Philippines and Liberia)

Jo-Anne Prud'Homme
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A praxis paper on urban violence prepared in collaboration between Balay, CSVr, LAPS and DIGNITY for the Global Alliance

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(SOUTH AFRICA, PHILIPPINES AND LIBERIA)

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By Jo-Anne Prud’Homme, Ernesto A. Anasarias, Themba Masuko, Malose Langa, Cara
Casey Boyce, Kari Øygard Larsen, Steffen Jensen and N. Russell Allen

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Foreword

Legal studies in relation to torture and cruel, inhuman and degrading treatment have often focused on places of detention and on what we could talk about as the more extraordinary forms of violations, especially against political opponents. These studies have largely mirrored the areas of focus of the comprehensive and highly competent institutional setup around not least the Committee Against Torture, the Subcommittee on the Prevention of Torture, the Universal Periodic Review process and other human rights mechanisms which all, in different ways, have a tendency to focus on torture and ill-treatment in the context of official custody. While this is clearly important, it seems to us that we need to begin concerning ourselves with state violence taking place outside of custodial settings in urban centers around the world, where state violence is prevalent but also normalized to the extent that it has become almost mundane. In this non-custodial context, law and legal regimes are no less important but human rights organizations and bodies have tended to pay less attention to the legal and policy frameworks guiding policing practices. In this paper, we address this omission and focus on international and national legal and policy frameworks for policing practices in non-custodial settings – including in the lead-up to arrests and in the dispersal of public assemblies – in three countries in the global south: South Africa, Philippines and Liberia. This has the double purpose of 1) providing human rights organizations with accessible information about legal and policy frameworks for policing practices in non-custodial settings in both international and national contexts, and 2) pointing to the necessity to both advocate for such legal and policy standards in such contexts and ensure that they are observed.

The paper is the product of a collaboration between four like-minded organizations – BALAY Rehabilitation Centre in the Philippines, The Centre for the Study of Violence and Reconciliation in South Africa (CSV), The Liberian Association for Psycho-Social Services (LAPS) and DIGNITY-Danish Institute Against Torture in Denmark. The collaboration has been formalised under the heading The Global Alliance against Authority-Based Violence in 2014. The basic premise of the alliance is that around the world and across different contexts, groups of people are deemed ‘victimizable’ by the powers that be, whether state or non-state – and hence legitimate targets of order-maintaining – or authority-based – violence. The risk groups might include young, indigent and criminalized men in slum areas, suspects of terrorism, migrants and refugees, sexual minorities or alleged carriers of disease. Their alleged transgressions might be based in a legal framework (like anti-drug laws) or in moral norms (like sexuality). However, all are likely victims of state or non-state violence. At the time of writing, the Philippine ‘War on Drugs’ provides a chilling example of the legitimacy of violence against such groups. How we might work with them depends on the crucial existence of legal frameworks that must be in place and importantly be adhered to.

As a central element in the collaboration, we produce a number of cross-cutting analyses of a variety of different issues while employing different methodologies. All topics emerge out of our common discussions on our different contexts and include linking human rights, development and violence in the city; psycho-social modelling for prevention and rehabilitation; social work models; community organizing strategies and partnership models.

Executive summary

This praxis paper examines the international and national legal and policy frameworks governing policing in non-custodial settings as well as exploring, in less detail, the prevalence, characteristics and patterns of police brutality in three countries – South Africa, Liberia, and the Philippines. What these countries have in common is that the prevailing police brutality, which is in effect a euphemism for torture and cruel, inhuman and degrading treatment or punishment, is a harsh and daily reality for many, particularly those living on the margins of society and in poor, urban neighbourhoods. The study seeks to shed light on the extent to which police officers respect the international and domestic legal frameworks in practice, drawing on information gathered from both police officers and victims of violations. The objective of this study is to review and analyse how the international human rights framework's stance on prohibition and prevention of torture is applied to police actions in the three countries, as well as how it resonates with their legal and policy frameworks. The focus is on police actions prior to detention of suspects, that is, in non-custodial settings.

The study reveals how states and police agencies choose to regulate their police forces. A comparative view exposes significant differences in the level and form of compliance between the domestic legal and policy frameworks and international standards in each country. The Philippines has an extremely comprehensive legal and policy framework for the police which includes robust and detailed regulations and policies aimed at ensuring the role of police in upholding and protecting international human rights standards. South Africa has a similarly robust system, though to a slightly lesser degree. Liberia, at the other end of the spectrum, is much less explicit in the regulations it imposes on the police for the protection and promotion of such standards. This is clearly indicative of the different historical trajectories. Liberia has relatively recently emerged from a bloody civil war and the nation is still in transition towards democracy. Philippines and South Africa are both much wealthier countries. Second, they have had more time since they emerged from historical processes that replaced racist and dictatorial governance with human rights-based regimes. Third, both countries benefit from vibrant civil societies that have been central in pushing progressive human rights agendas.

Despite these differences, there is some commonality seen in all three settings: namely, that the legal and policy framework for policing in general has little bearing on the way policing is carried out. In the Philippines, which has the strongest legal and policy human rights framework for policing, recent months have seen a dramatic rise in the number of extrajudicial killings carried out, with widespread impunity and in some cases acquiescence from police. But the problems are not just of a recent nature. Despite the progressive legal and policy framework, corruption is rampant and policing often falls under the control of political players – in fact, the police are sometimes part of local political machines. In South Africa, police brutality and violence continues to take place despite strong oversight mechanisms and explicit human rights legal and policy frameworks. In no small measure this is due to what is considered a rampant crime wave where the police have been seen as the thin blue line separating the country from absolute chaos and where human rights have been considered in many quarters as hamstringing the police. In Liberia, the police institution was all but destroyed by the war and whatever professionalism had existed before had disappeared. Instead, military factions took over. Despite justice sector reforms, this continues to hamper police legitimacy.

The conclusion is that while the legal and policy framework is important, it is insufficient on its own to ensure the full protection and promotion of human rights by police officers. However, this does not mean that legal and institutional reforms and human rights work should not be carried out. The praxis paper briefly outlines three recommendations organized around the gaps between international and domestic law; lack of implementation of human rights standards; and the relation between legal advocacy and other forms of interventions in poor, urban neighbourhoods. These recommendations are borne out of our research and work under the Community Led Interventions project, and notably our awareness of the need to focus on torture and ill-treatment taking place in non-custodial settings, which has often not received sufficient attention due to the focus on torture and ill-treatment in places of detention. Our aim with these recommendations is to encourage other organisations to take steps to examine the issue of torture and ill-treatment in non-custodial settings alongside more developed work around monitoring places of detention.

Recommendations to civil society:

1. Take steps to raise awareness about the issue of torture and cruel, inhuman or degrading treatment or punishment which takes place in non-custodial settings, such as in daily interactions between the police and public in the lead-up to arrests or in the dispersal of public assemblies in urban centers across the world.
2. Identify and address gaps between domestic and international legal and policy frameworks relating to torture and ill-treatment taking place outside of custodial settings until they exist in the same thorough manner as in relation to custodial policing.
3. Advocate for the implementation of international human rights standards through domestic legal and policy frameworks in non-custodial contexts, not least in relation to the ever-growing cities across the world, which are in many ways the new human rights frontier.

1. Introduction

The international legal regime governing the prohibition, prevention and combating of torture and other cruel, inhuman, or degrading treatment or punishment has attained considerable sophistication over the past decades. Much of this has focused on torture and ill-treatment taking place in ‘traditional’ settings, that is, torture of persons in custody, be it police detention or prison.

DIGNITY’s Community-Led Interventions Project, which focuses on authority-based violence in poor, urban neighbourhoods, has sought to highlight and examine torture and ill-treatment which takes place outside the context of deprivation of liberty. While police torture in the detention setting has been given ample attention by the international human rights system and academia, what happens outside the gates of prison, in the poor urban neighbourhoods, is often overlooked by the international anti-torture legal framework and the international treaty bodies set up to monitor compliance with international norms. Our field of attention includes torture and ill-treatment by police officials in their interactions with civilians in public spaces, for example in the lead-up to arrests or in the dispersal of public assemblies.

The current study will examine the international and national legal frameworks governing policing in non-custodial settings as well as explore, in less detail, the prevalence, characteristics and patterns of police brutality in three countries, namely South Africa, Liberia, and the Philippines. What these countries have in common is that the prevailing police brutality, which is in effect a euphemism for torture and cruel, inhuman and degrading treatment or punishment, is a harsh and daily reality for many, particularly those living on the margins of society in poor, urban neighbourhoods.

For this reason, the Community Led Interventions Project opted to conduct a number of legal studies examining policing law and policy, as well as practices, in South Africa, Liberia and the Philippines and their compliance – or lack of compliance – with relevant international human rights standards. The focus of this report is not on policing practices as they pertain to criminal investigation and interrogation of suspects, but rather on police interactions with civilians in non-custodial settings, such as during patrols, in the lead-up to arrests, when responding to calls for assistance, the dispersal of public assemblies, and the like.

While much has been written by scholars and researchers about policing and human rights in all three countries, this study aims at examining the legal framework and the practical realities of policing in the countries under scrutiny and their compliance with international human rights standards.

Each country-specific chapter provides a detailed profile of the legal and policy framework relating to policing, including constitutional and statutory law, as well as codes of conduct and practice manuals, and they assess the degree to which these are adherent to applicable and relevant international human rights standards. Furthermore, the study seeks to shed light on the extent of respect for the international and domestic legal framework by police officers in practice, drawing on information gathered from both police officers and victims of violations by police officers. The objective of this study is to review and analyse how the international human rights framework, in particular as it pertains to the prohibition and prevention of torture, applies to police actions, with a focus on the actions of police prior to detention of suspects, that is, in non-custodial settings.

This endeavour is important for both the Global Alliance and potentially for human rights organizations working against urban violence, torture, and cruel, inhuman and degrading treatment in more mundane settings. First, legal frameworks governing policing outside the detention context differ, and in order to be able to develop relevant advocacy approaches it has been important for the members of the Global Alliance to be cognizant of these differences, both in terms of international treaty body advocacy and in relation to programming local projects. Secondly, and for a broader audience, this study of legal frameworks may assist other human rights organizations to identify potential strategies and ways of working against urban violence. Finally, the study allows us to identify gaps in the legal frameworks and find ways to fill them and it allows us to identify lack of compliance, which can facilitate the development of strategies to address the lack of implementation.

As a legal study, the paper is based on an examination of international legal frameworks and policies as well as national law and policies from the three countries under review. Initial analyses on South Africa and the Philippines were conducted as desk studies from Copenhagen. However, for Liberia, many of the documents were not available online; in fact parts of its legislative and policy framework are still being developed and written. Instead we conducted field work in Monrovia, identifying documents and interviewing important stakeholders in government and in international organizations. This allowed us to describe in detail the legal frameworks applying in the three contexts, including identifying gaps and lack of consistency with international human rights law. As a second part of the analysis, CSV (for South Africa), BALAY (for the Philippines) and LAPS (for Liberia) have provided information about practice and the implementation (or lack thereof) of human rights standards and legal frameworks for policing in non-custodial settings. In this way, we have been able to identify the frameworks, the gaps in the frameworks and the (lack of) adherence to the frameworks in a collaborative manner.

Chapter 2 outlines the international human rights standards related to policing with respect to general human rights principles and individual human rights, anti-corruption standards, oversight mechanisms, and soft law standards governing the use of force and firearms and the rules pertaining to the dispersal of unlawful assemblies. These areas are all central to the international human rights standards regulating the role of the police in non-custodial policing. Chapters 3-5 go into detail, with the three case studies following more or less the same structure as Chapter 2; that is, focusing on the specific obligations of police officers to respect and protect human rights standards in the course of carrying out their role, but with more contextual analysis around policing structures. Throughout the analysis, we look at the legal frameworks, the practices of policing and the extent to which they are in compliance with international and domestic law. Finally, in Chapter 6, we draw out the important conclusions from the study and provide some lessons learnt and recommendations for human rights practice and research in relation to torture and ill-treatment in poor urban neighbourhoods.

2. Policing and International Human Rights Standards

The aim of this report is to assess the legal framework and practice on policing in South Africa, Liberia and the Philippines and the degree to which these comply with international human rights law. In order to conduct such an assessment, it is necessary to provide an overview of the international human rights standards relevant for the work of the police force. As agents of the state, which is the duty-bearer under the international human rights framework, police officers are required to carry out their role while promoting, protecting and upholding the human rights obligations of the state they represent.

This chapter sets out the international standards for policing as set out in a number of relevant hard and soft law instruments. These international standards will serve as the benchmark against which to assess the domestic laws, standards and policies governing law enforcement in the three countries addressed in this report. Each country chapter will include information on the level of compliance between the international human rights framework as it relates to policing and domestic legislation, as well as on the practical implementation (or lack thereof) of these international and domestic laws and standards.

It is important to note at the outset that across the three countries included in this study, the main function of the police is to maintain public order, to prevent and detect crime, and to protect all members of society from criminal acts. As such, police officers may encounter situations that put their safety, even in some cases their lives, at risk. Therefore, it is important that they are afforded specific powers to enable them to carry out this role, including the power to use force and firearms, to arrest and detain, and to carry out searches or seizures. However, these powers and the way they are exercised must conform to the principle of proportionality, and may not infringe on the human rights of those impacted by law enforcement work.

Human rights which can be impacted by police actions include:

1. Right to human dignity (and integrity);
2. Right to life;
3. Right to security and liberty, and freedom from arbitrary arrest and detention;
4. Freedom from torture and cruel, inhuman or degrading treatment or punishment;
5. Right to fair trial; and
6. Right to privacy.

Breaches of law by police officials have a severely negative impact on society as a whole, and greatly undermine the credibility of the law enforcement institution and, in turn, in their ability to carry out their role. Despite the difficulties and dangers faced by law enforcement officials in their work, it is fundamental that all police officers carry out their role in strict compliance with the law and maintain high legal and ethical standards.¹ This requires clear orders and procedures that are available for public scrutiny, and strong and independent oversight of police activities.

The role of the police therefore requires a balance between the rights of potential victims of crime and of society as a whole, as well as the rights of those impacted by law enforcement work.²

The international human rights instruments which bear most relevance to the function of the law enforcement are the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984). These instruments contain provisions which directly impact on the behaviour of law enforcement. A number of soft law instruments have elaborated on the basis of these provisions, and provide in significant detail the specific measures that law enforcement must adopt in order to ensure that their functioning is in compliance with the relevant provisions of international human rights law. These are the United Nations Code of Conduct for Law Enforcement³ and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, both adopted as UN General Assembly resolutions.⁴ In order to provide further guidance, the UN Office of the High Commissioner for Human Rights (OHCHR) has developed a collection of standards for policing known as the OHCHR International Human Rights Standards for Law Enforcement.⁵ In addition, a number of international agencies and organisations have elaborated guidelines and good practice manuals

1 ICRC, International Rules and Standards for Policing. Retrieved from: <https://www.icrc.org/eng/assets/files/other/icrc-002-0809.pdf>, p. 19.

2 Ibid.

3 Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>.

4 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>. (Hereafter 'Principles on Force and Firearms').

5 UN Office of the High Commissioner for Human Rights, International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police. Retrieved from: <http://www.ohchr.org/Documents/Publications/training5Add1en.pdf>. (Hereafter 'OHCHR Standards').

for law enforcement to ensure that they carry out their role in conformity with international human rights standards, such as the International Committee for the Red Cross (ICRC) International Rules and Standards for Policing⁶ and the Geneva Centre for Democratic Control of Armed Forces (DCAF) International Policing Standards Series, in particular the Guidebook on Democratic Policing and the Basic Human Rights Standards for Law Enforcement Officials.

Based on the abovementioned guidelines, the following section outlines the main obligations of law enforcement with regard to adhering to the international human rights legal framework, with particular focus on measures necessary to ensure respect, protection and fulfilment of the right to life, the right to liberty and security, and the right to be free from torture and other cruel, inhuman or degrading treatment. These are derived from:

2.1 Human Rights Principles Governing Law Enforcement this heading has not indented like those of its level below – the reason could be that missing full stop but when I try to fix it I make it worse - AS

In order to ensure the correct balance is struck between protecting society from crime and upholding the rights of all citizens, including those suspected of or found responsible for crime, four main principles should be observed by police when carrying out actions that can impact on human rights:

- **Legality:** all actions should be based on existing legal provisions;
- **Necessity:** actions should not restrict or impact on human rights more than is (absolutely) necessary;
- **Proportionality:** actions should not impact on human rights in a way that is disproportionate to the aim; and
- **Accountability:** police must be accountable for all their actions and at all relevant levels (judiciary, public, government, internal chain of command).⁷

‘Law enforcement’ refers to all officers of the law who exercise police powers, especially the powers of arrest and detention. The following general principles should form the backbone of any policing service. They embody the human rights as well as the rule-of-law standards of democratic policing, which are fundamental to ensuring public confidence and trust in the police service, as well as a police service that respects and protects human rights. This section outlines seven basic human rights principles that bring the functioning of a police force into line with international human rights standards.

1. Law enforcement shall at all times fulfil the duty imposed on them by law, by serving the community and by protecting persons against illegal acts.⁸
2. Law enforcement officials shall at all times respect and obey the law.⁹
3. Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.¹⁰
4. Law enforcement officials shall respect the principles of legality, necessity, non-discrimination, proportionality and humanity.¹¹
5. Law enforcement officials shall impose limitations on individuals only as determined and permitted by law.¹²
6. Limitations on the exercise of rights and freedoms shall be only those necessary to secure recognition and respect for the rights of others, and for meeting the just requirements of public order and the general welfare in a democratic society.¹³
7. Law enforcement officials shall treat all persons as being equal before the law, without discrimination of any kind, including discrimination on the basis of race, gender, religion, language, colour, political opinion, national origin, property, birth or other status.¹⁴

What do ‘proportionality’ and ‘necessity’ mean in practice?

The question of what proportionality and necessity mean in practice can sometimes seem elusive, and of course it is subject to a certain degree of discretion. However, there is existing guidance from key international bodies such as the ICRC and the European Court on Human Rights as to what the application of these principles looks like in practice. According to the ICRC, in order to adhere to the principles of proportionality and necessity, law enforcement officers are obliged to ensure that their actions are proportionate and necessary for the achievement of lawful objectives. Lawful objectives include preventing injury or damage to others or to property or carrying out a lawful arrest.¹⁵

Proportionality and necessity must be the underlying principles in all police actions, including both the decision to arrest and the execution of the arrest. In other words, not only must the reasons for the arrest be proportionate and necessary to achieve the lawful objective, but the methods (including the degree of force) used to carry it out must also be proportionate and necessary. While there is a degree of discretion afforded to a police officer in making this determination, there is also clear guidance from international human rights bodies. For example, in the case of Bouyid

8 UN Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979. (Hereafter ‘Code of Conduct’).

9 Code of Conduct, articles 1 and 8; OHCHR Standards.

10 Code of Conduct, article 2; OHCHR Standards.

11 Code of Conduct, articles 2, 3, 5, 7 and 8; Principles on Force and Firearms, preamble and principles 2, 4, 5, 9, 11, 13, 14, 15, 16, 24, 25 and 26; OHCHR Standards.

12 UDHR; article 29(2); OHCHR Standards.

13 UDHR, article 29(2); OHCHR Standards.

14 UDHR, article 7; ICCPR, articles 26; OHCHR Standards.

15 International Committee for the Red Cross, Use of Force in Law Enforcement Operations; Advisory Guidance, September 2015. Retrieved from: [file:///C:/Users/jop/Downloads/the-use-of-force-in-law-enforcement-icrc-eng%20\(1\).pdf](file:///C:/Users/jop/Downloads/the-use-of-force-in-law-enforcement-icrc-eng%20(1).pdf).

6 International Rules and Standards for Policing.

7 ICRC.

v. Belgium, the European Court of Human Rights held that “where an individual is ... confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person’s conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.”¹⁶ Article 3 of the European Convention on Human Rights prohibits torture and cruel, inhuman or degrading treatment or punishment. The concepts of proportionality and necessity are therefore clearly articulated by international bodies, and this explication helps to ensure their effective implementation in practice.

2.2 Anti-Corruption

While corruption itself does not constitute a violation of human rights, there is a wealth of evidence that shows that where corruption is able to thrive, so too does a lack of respect for basic human rights standards and principles.¹⁷ For this reason, a fundamental component of any human rights-based policing system is the prevention of corruption, which includes legislation prohibiting such acts as well as mechanisms for ensuring accountability for those guilty of corruption.

1. Law enforcement shall not commit any act of corruption. They shall rigorously oppose and combat all such acts.¹⁸

2.3 Oversight Mechanisms

A hallmark of democratic policing is the acceptance and establishment of civilian oversight.¹⁹ Good policing requires the police to be able to cooperate effectively with the public, and this in turn necessitates that the public have confidence and trust in the police. Ensuring that erring police officers are held accountable is a core component of building public trust and confidence in the police, and moreover accountability also serves as a dissuasive or deferring factor: if police officers’ unlawful practices are punished, this creates incentive for other police officers to ensure their actions are within the bounds of the law. According to the UN Office of Drugs and Crime (UNODC) Handbook on Police Accountability, Oversight and Integrity: “Accountability involves a system of internal and external checks and balances aimed at ensuring that police perform the functions expected of them to a high standard and are held responsible if they fail to do so. It aims to prevent the police from misusing their powers, to prevent political authorities from misusing their control over the police, and most importantly, to enhance public confidence and (re-)establish

¹⁶ Case of Bouyid v. Belgium, European Court of Human Rights (Application No. 23390/09), 28 September 2015. Retrieved from: <http://hudoc.echr.coe.int/leng?i=001-157670>

¹⁷ See for example: Seventh Annual Report of the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN DOC: CAT/C/52/12, May 2015. Retrieved from: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/52/2&Lang=en.

¹⁸ Code of Conduct, Art. 7, OHCHR Standards.

¹⁹ UNODC Handbook on Police Accountability, Oversight and Integrity, 2011. Retrieved from: https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf, p. 7.

police legitimacy.”²⁰ This section outlines the basic standards for oversight of the police in order to ensure its effectiveness and functionality, based on international human rights principles.

1. Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.²¹
2. Law enforcement shall be representative of and responsive and accountable to the community as a whole.²²
3. Superior officials shall be held responsible for the actions of police under their command if the superior knew or should have known of abuses but failed to take action.²³
4. Officials who refuse illegal orders shall be given immunity.²⁴
5. All police are to be subject to continuous and effective report and review procedures.²⁵

2.4 Rules Governing the Use of Force and Firearms

In order to carry out their function, the police are necessarily granted a degree of discretion. As described by UNODC, “police officers typically have some room for maneuver when using police powers, with the authority to make decisions on such matters as how much force to use and on whether to carry out arrests or searches.”²⁶ However, in the case of use of force, it is important that such discretion be carried out within certain guidelines and adhering to basic principles of proportionality and necessity. This section outlines the basic guidelines and principles that should be applicable to police forces in order to ensure they carry out their function, as it pertains to the use of force and firearms, in a way that complies with international human rights standards.

Use of Force

1. In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons, in particular the right to life, security of the person, and freedom from torture and cruel, inhuman or degrading treatment and punishment.²⁷ This applies to both actions carried out directly by law enforcement officials, as well as actions carried out by non-state actors in the presence of or with the consent or acquiescence of a law enforcement officer.²⁸
2. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force. They may only use force if other means

²⁰ Ibid, p. 9.

²¹ Code of Conduct, Art. 1; OHCHR Standards.

²² Code of Conduct, Preamble para. 8(a); OHCHR Standards.

²³ Principles on Force and Firearms, principle 24; OHCHR Standards.

²⁴ Principles on Force and Firearms, principle 25; OHCHR Standards.

²⁵ Principles on Force and Firearms, principles 22-26; Code of Conduct, article 8; OHCHR Standards.

²⁶ UNODC, Police accountability handbook.

²⁷ Code of Conduct, article 2.

²⁸ CAT, art. 1.

remain ineffective or without any promise of achieving the intended result.²⁹ Force is to be used only when strictly necessary.³⁰

3. Force is to be used only for lawful law enforcement purposes.³¹ When force needs to be used to achieve a legitimate objective, the consequences of such force may not outweigh the value of the objective to be achieved, which would render the use of force disproportionate.³²

4. No exceptions or excuses shall be allowed for unlawful use of force.³³

5. Restraint is to be exercised in the use of force.³⁴

6. A range of means for differentiated use of force is to be made available and all officers are to be trained in the use of the various means for differentiated use of force.³⁵

7. All officers are to be trained in use of non-violent means.³⁶

8. Whenever the lawful use of force is unavoidable, law enforcement shall:
 - Minimize damage and injury, and respect and preserve human life;³⁷
 - Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;³⁸ and
 - Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.³⁹

9. All incidents on the use of force shall be followed by reporting and review by superior officials.⁴⁰

Use of Firearms

1. Firearms are to be used only in extreme circumstances.⁴¹

2. Law enforcement officials shall not use firearms against persons except in self-defence or in defence of others against imminent death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such

²⁹ Principles on Force and Firearms, principle 4; OHCHR Standards.

³⁰ Principles on Force and Firearms, principles 4 and 5; OHCHR Standards.

³¹ Principles on Force and Firearms, principles 5 and 7; OHCHR Standards.

³² Code of Conduct, article 3.

³³ Principles on Force and Firearms, principle 8; OHCHR Standards.

³⁴ Principles on Force and Firearms, principles 2, 5(a), 9; OHCHR Standards.

³⁵ Principles on Force and Firearms, principle 2; OHCHR Standards.

³⁶ Principles on Force and Firearms, principles 4 and 20; OHCHR Standards.

³⁷ Principles on Force and Firearms, principle 5(b); OHCHR Standards.

³⁸ Principles on Force and Firearms, principle 5(c).

³⁹ Principles on Force and Firearms, principle 5(d).

⁴⁰ Principles on Force and Firearms, principles 6, 11(f) and 22; OHCHR Standards.

⁴¹ Principles on Force and Firearms, principle 4; OHCHR Standards.

a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.⁴²

3. Rules and regulations for the use of firearms by law enforcement should include guidelines that.⁴³

- Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the type of firearms and ammunition permitted;

- Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

- Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

- Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

- Provide for warnings to be given, if appropriate, when firearms are to be discharged; and

- Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

4. Whenever the lawful use of firearms is unavoidable, law enforcement shall:⁴⁴

- Exercise restraint in such use and act in proportion to the seriousness of the offense and the legitimate objective to be achieved;

- Minimize damage and injury, and respect and preserve human life;

- Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; and

- Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

5. All incidents on the use of firearms shall be followed by reporting and review by superior officials.⁴⁵

6. Superior officials shall be held responsible for the actions of police under their command if the superior official knew or should have known of abuses but failed to take concrete action.⁴⁶

⁴² Principles on Force and Firearms, principle 9.

⁴³ Principles on Force and Firearms, principle 11(a)-(f).

⁴⁴ Principles on Force and Firearms, principle 5(a)-(d).

⁴⁵ Principles on Force and Firearms, principles 6, 11(f) and 22; OHCHR Standards.

⁴⁶ Principles on Force and Firearms, principle 24; OHCHR Standards.

2.5 Dispersal of Unlawful Assemblies

An important role of the police is maintenance of public order, which includes the dispersal of unlawful public assemblies. This part of the police function is one which in many contexts raises questions regarding the lawfulness of use of force by police officers. It is therefore important that police forces are governed by clear standards and rules when it comes to the permissible actions they may take when dispersing unlawful assemblies, so as to ensure that this role is carried out in compliance with international human rights standards. These are outlined in this section.

1. In the dispersal of non-violent assemblies, law enforcement shall avoid the use of force, or, where that is not practicable, shall restrict such force to the minimum extent necessary.⁴⁷
2. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.⁴⁸

2.6 Conclusion

The legal norms detailed in this chapter, which reflect international human rights standards, provide a clear and detailed picture of the obligations of states and their law enforcement officers —both in terms of legislation and practice—when it comes to ensuring that the police carry out their function whilst respecting and protecting international human rights standards. In the country chapters of this report, the domestic legal framework of the respective countries will be examined to determine to what extent it is in compliance with the international standards detailed above.

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Principles on Force and Firearms, principle 13.

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Principles on Force and Firearms, principle 14.

South Africa

3. South Africa: Legal and Policy Framework

3.1 Overview of Policing System and Structure

Chapter 11 of the Constitution of the Republic of South Africa, Act 108 of 1996, provides for the creation of security services. Section 199 (1) states: “The security services of the Republic consists of a single defence force, single police service and any intelligence services established in terms of the Constitution.” The structure of the SAPS is outlined in Section 205 (1), where it specifies that the “national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.”

In 1990 there were 11 police forces in South Africa, each constituted under its own piece of legislation and operating within its own jurisdiction. This was a result of the apartheid regime’s system of ‘homelands’, which designated certain territories within the larger national space for different racial or ethnic groupings and legislated for a certain measure of autonomy in governing their own affairs. This autonomy included police systems that operated outside of the police system in South Africa. The fall of apartheid culminated in the creation of one unitary state, including the amalgamation of the security forces.

Political changes such as the unbanning of political parties, release of Mandela and other political prisoners, and safe return of exiles included a reform of the police. Part of this reform process included the following key priorities:

- Depoliticisation of the police force;
- Increased community accountability and oversight of the police;
- More visible policing, particularly in black communities that were previously under-policed;
- Establishment of improved and effective management practices;
- Reform of the police training system (including racial integration); and
- Restructuring of the police force in line with the Constitution.

After 1994 the new government moved swiftly to change some of the symbols associated with apartheid policing. These included:

- Name change from South African Police (SAP) to South African Police Service (SAPS) to symbolise the shift from 'force' to 'service';
- A new police leadership was appointed, with the National Commissioner appointed directly by the President of the Republic; and
- The rank system was demilitarised and revised according to the British model. For example:

General = became Commissioner

Brigadier = became Director

Colonel = became Senior Superintendent

However, in 2010, as part of ongoing struggles within the service – not least resistance to the civilian oversight body and public critique from human rights organizations – the police reverted to a more military style, including the ranking system, as part of a strategy to address high crime levels, which many saw as a result of the 'new' emphasis on human rights in policing.⁴⁹

- The uniform was changed. In the old dispensation, each of the eleven police forces had its own uniform and insignia. A new uniform was designed for the new SAPS, which was slightly less militaristic;
- A new insignia was created for the SAPS, to replace that of the eleven former police forces. The new badge consists of the image of an aloe (an indigenous South African plant with healing properties) with nine spikes, to symbolise the nine new provinces;

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For analyses of these debates, see Julia Hornberger (2013) "From general to commissioner to general: On the popular state of policing in South Africa", *Law & Social Inquiry*, 38, 3: 598–614 and Stefan Jensen (2014) "Conflicting Logics of Exceptionality: New Beginnings and the Problem of Police Violence in Post-Apartheid South Africa", *Development and Change*, 45, 3: 458–478.

- The colour of police vehicles changed, with all new vehicles being painted white with blue lettering, instead of the bright yellow which had become associated with fire-brigade style policing in armoured vehicles; and

- In some provinces, the names of police stations were changed, where they had previously been named after apartheid-era politicians or police leaders. The most notable was the John Vorster Square police station, where numerous detainees had been tortured and killed by Security Police, which became the Johannesburg Central police precinct.

These symbolic changes, while superficial, did contribute to changing public perceptions of the police service. They also required a great deal of internal negotiation and had quite severe financial implications for the new police service.

A deeper reform in the SAPS saw significant change to its personnel composition. At the dawn of democracy the majority of commanders were white while black police officers occupied lower ranks. Twenty-three years later the staff demographic reflects the national one.

Another indication of the democratisation of the police included regarding police officers as workers. This gave them the right to organise, form or join unions and to negotiate for better working conditions and salaries.

One more aspect of the transformation of the SAPs was the adoption of a community policing approach. Community Policing is a philosophy aimed at achieving more effective crime control by reducing fears of crime, improving community police relations and improving police services through proactive partnerships and programs with communities. In short, the Community Policing approach was aimed at strengthening – or in many instances creating – a partnership between the police and the community to jointly solve policing and safety problems. The Constitution provides for the creation of Community Police Forums (CPF), and for their participation in policing.

According to police reports, by 2016 CPFs had been established in all of the country's 1 138 police stations⁵⁰. In terms of the SAPS Act, the implementation of the CPFs rests with the police. This has weakened the functioning of the CPFs and their ability to influence policing and hold the police to account for policing at community level. However, civilian control is not always the answer. A tendency that has weakened the functioning of many CPFs is a struggle by political parties for control of them, which sometimes results in people without the capacity taking over the structure for political expediency. A strong trend is for CPFs to function better in more affluent communities than in poor communities. In affluent communities, the participation of business people, lawyers and other professionals has been important in providing the necessary capacity and expertise to influence policing and hold the police accountable. In other instances, affluent communities have contributed resources to the police to ensure that effective policing of their communities takes place. The same cannot be said about poor communities, where there are often high levels of apathy from community members, who have other priorities despite high crime levels.

Challenges

The SAPS faces challenges on many fronts, including:

- High crime levels, especially violent ones, have the effect of putting the police as an institution in the spotlight. In an attempt to increase public confidence in their efficiency by bringing the numbers down, police may use excessive force but this can have the opposite effect, notably increasing public distrust and alienating the communities they are meant to serve. As confidence in the criminal justice system ebbs so does the incidence of vigilantism rise, as people in despair see no option but to take the law into their own hands.
- Disgruntlement over the reform process and affirmative action policies resulted in the loss of highly skilled police officers, mostly to the private security sector. This vacuum resulted in the promotion and recruitment of young and inexperienced police officers to senior positions, which further lowered the force's crime fighting capacity and, in turn, its morale.
- Police corruption remains a cancer in the SAPS despite the fact that police officers are better paid than other public service employees. It corrodes police community relations, respect for the rule of law and the functioning of other criminal justice institutions.
- The leadership of the SAPS has also come under scrutiny. Two police commissioners have been dismissed for serious misconduct and a third had been suspended for 18 months at the time of writing. Commissioner Jackie Selebi was sentenced to 15 years in prison for corruption in August 2010. His successor, Bheki Cele, was dismissed in 2012 amid a maladministration scandal involving over R1.5 billion. His successor, Riah Phiyega – appointed in 2012 with no policing background or experience – was still suspended on full salary by March 2017 although in November 2015 an internal inquiry found that she had committed perjury and in November 2016 a judicial commission of inquiry found her unfit to hold her office and held her responsible for the deaths of 34 striking miners, shot by police in a protest at Marikana in 2012.

Also, police leaders have down the years sent confused and confusing messages about police use of force, the rule of law and use of firearms. For example, in April 2008 Deputy Police Minister Susan Shabangu told police: "You must kill the bastards if they threaten you or the community.... You must not worry about the regulations. That is my responsibility.... I want no warning shots. You have one shot and it must be a kill shot."⁵¹ During his term as national police commissioner from July 2009 to June 2012 Bheki Cele was well known for voicing a similar philosophy, which has been held responsible for encouraging police brutality and increasing the number of deaths at police hands. In line with this trend, the police service in 2010 was remilitarised, that is, the apartheid-era military ranking system was restored and civilian participation severely weakened. Since then, the number of killings by police officers has increased, including the abovementioned massacre of 34 striking miners in Marikana in August 2012.

51 The Telegraph, "Kill the bastards" South African police advised," 10 April 2008, retrieved from: <http://www.telegraph.co.uk/news/worldnews/1584641/Kill-the-bastards-South-African-police-advised.html>.

3.2 International Law

South Africa is party to a number of international human rights treaties, including the ICCPR, ratified in 1994; the International Convention on the Elimination of All Forms of Racial Discrimination, ratified in 1998; the Convention on the Elimination of all Forms of Discrimination Against Women, ratified in 1995; and the CAT, ratified in 1998. While South Africa has signed the Optional Protocol to the Convention against Torture (OPCAT), it has yet to ratify it. Under Chapter 14, Section 231 of the Constitution of South Africa, international treaties ratified must be incorporated into domestic law by means of enacting legislation in order for them to apply domestically, unless their provisions are self-executing, a concept which has not been acted on in South African legislative history.⁵² Once treaties have been incorporated, they have the same legislative status and applicability as other legislation adopted by the legislature, and courts generally follow the rules for interpreting international treaties as found in the Vienna Convention on the Law on Treaties.

Under Section 232 of the Constitution customary international law is deemed law in the Republic, unless it is inconsistent with the Constitution or an Act of Parliament. In addition to this, Section 233 states that when interpreting any legislation, "every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." Thus, international law has supremacy in the Republic, ensuring that domestic law evolves alongside international standards and encompasses all human rights principles and norms enshrined in customary international law.

3.3 Regional Law

As a member of the African Union, the treaties and other instruments adopted by the African Commission on Human and Peoples' Rights are applicable to South Africa, and have the same standing as international law. The African Commission has adopted treaties containing specific individual and group rights that law enforcement officials must uphold when carrying out their duties. The African Charter on Human and Peoples' Rights (African Charter) came into force in 1986 and enshrines the rights of individuals and groups on the African continent. It draws heavily on the Universal Declaration of Human Rights and other subsequent core international human rights instruments. Article 5 of the African Charter provides for the right to the human dignity "inherent in a human being and to the recognition of his legal status." The article also prohibits all forms of exploitation and degradation, including torture. The Robben Island Guidelines for the Prevention and Prohibition of Torture in Africa (Robben Island Guidelines), adopted by the African Commission on Human and Peoples' Rights in 2002, expounds on the prohibition and prevention of torture in Africa, and also addresses the needs of torture victims. These guidelines draw extensively from international law, in particular the UNCAT, OPCAT and ICCPR, and provide that investigations into allegations of torture should be guided by the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol). The African Commission on Human and Peoples' Rights adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa in 2014.

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Constitution of the Republic of South Africa 1996, Chapter 14, Section 231. Retrieved from:

<http://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-14-general-provisions#231>. See also: Erika de Wet, Holger Hestermeyer, Rudiger Wolfrum, The Implementation of International Law in Germany and South Africa. Pretoria University Press: 2015. Retrieved from: <http://www.idla.up.ac.za/images/news/2015/The%20implementation%20of%20international-law%20in%20Germany%20and%20South%20Africa.pdf>.

3.4 Domestic Law and Policies

3.4.1 Prohibition and Prevention of Torture

As mentioned above, South Africa is bound by a number of international human rights treaties, which have been ratified and many of which have been incorporated into domestic law. The Constitution of South Africa, which is the supreme law of the land, seeks to establish a society based on “democratic values, social justice and fundamental human rights.” The Constitution enshrines the rights found in the Universal Declaration of Human Rights, the ICCPR and the International Covenant on Economic, Social and Cultural Rights, among others, in the extensive Bill of Rights contained in Chapter 2.⁵³ The comprehensive nature of the human rights protection in the South African Constitution reflects the importance of human rights in the South African political and administrative processes.

With regard to torture, the Constitution specifically guarantees freedom from torture as well as cruel, inhuman and/or degrading acts. Furthermore, it contains critical legal safeguards against torture, including the prohibition of evidence obtained “in any manner that violates any right in the Bill of Rights.” These constitutional provisions have been translated into statutory law through the adoption of the Prevention and Combating of Torture of Persons Act in 2013.⁵⁴

3.4.2 Organisation and Functions of Law Enforcement

The Interim Constitution established the South African Police Service (SAPS) in 1994. Heavily influenced by the National Peace Accords (NPA) in 1991, it established a single national police service for SA under the executive command and control of a National Commissioner, appointed by the President. The SAPS Act, adopted in 1995, reiterates the constitutional provision for the establishment of the police force, and provides for the organisation, regulation and control of the SAPS, and matters in connection therewith. In 1996, the new Constitution was signed and came into force in 1997, expanding on its predecessor by establishing not only the new structures, powers and functions of the SAPS, but also its governing principles, which set out standards for the conduct of its members as well as for the transparency and accountability of the service.⁵⁵ The Constitution provides for the creation of the Security Services which “consists of a single defense, single police service, and any intelligence services established in terms of the Constitution.”⁵⁶ The structure of the SAPS is set out in Section 205(1) of the Constitution, which provides that: “The national police service must be structured to function in the national, provincial and the appropriate local sphere of government.”⁵⁷

Police-specific legislation, like much of SA’s post-apartheid legislation, has been relatively comprehensive in its language of human rights and adoption of internationally recognised standards. The SAPS Act⁵⁸ remains the central piece of legislation governing the police, with lawyers forced to draw upon other pieces of legislation and soft law provisions clarifying specific areas of policing. This becomes apparent below in the sections of this chapter relating to the use of force and firearms, as

well as the dispersal of public assemblies. The Criminal Procedure Act (CPA)⁵⁹ is another important piece of legislation, as it provides for the principles of necessity and proportionality in the protection of the law by the police. The CPA allows use of force “as may be reasonably necessary” or “not out of proportion to the circumstances,” or “proportional to the seriousness of the crime.”⁶⁰

3.4.3 Code of Conduct

The SAPS Code of Conduct (CC) introduced on 31 October 1997 is published on the SAPS website. While easily accessible to civilians, the CC does not constitute legislation and is therefore non-binding on SAPS officers. The CC can also be found in Chapter 2, Part 1 of the SAPS Employment Regulations (2008). This document provides guidelines for SAPS members’ relationships with the legislature and executive, the public and fellow employees, as well as for their conduct in the performance of their duties, personal conduct and private interests. These regulations are comprehensive, regulating police conduct not only in relation to members of the public but also among their peers and in their private lives, as well as with the state and the legislation they are bound to respect and uphold. Articles are detailed and comprehensive in their exploration of each layer of policing, with general human rights principles evident throughout. Annexures 1-3 of the regulations include 1) the employment contract for the national commissioner of the SAPS, 2) the permanent employment contract for the senior management of the SAPS, and 3) the fixed term contract for the senior management service of the SAPS. Under each of these contracts the employee undertakes to comply with the prescribed CC, and if he or she “does not perform satisfactorily in relation to the requirements,” “the employer may deal with him or her in accordance with procedure.” As such, these regulations only hold service members accountable to their employers, and do not appear to provide redress for members of the public who may fall victim to violations of the CC. Despite this, such contracts provide employees with an incentive to follow protocol, leaving public redress in the hands of SA’s various oversight mechanisms. The only remaining concern is whether an incentive exists for employers to monitor employee conduct and follow procedure in order to ensure law enforcement accountability. Consequently, monitoring must exist at all levels.

3.4.4 Code of Ethics

Enquiries through SAPS regarding their Code of Ethics (CE) are directed to the SAPS website, raising similar doubts surrounding their significance in everyday policing, their legitimacy as a source for police practice and SAPS transparency in general. While the CE reflects clear parallels with international human rights principles discussed in Chapter 2, suggesting domestic standards are in keeping with international ones, their lack of legal status raises the same concerns regarding accountability. The absence of accessible legislation on police ethics available to public scrutiny is also concerning from a human rights perspective.

The SAPS Regulations produced by the Department of Safety and Security (2008) and published in the Government Gazette include provisions for ethical policing. Section 18 stipulates the designation of an ethics officer. It states: “The National Commissioner must designate or appoint an ethics officer for the service to (a) promote integrity and ethical behaviour in the Service; (b) advise employees on ethical matters; and (c) identify and report unethical behaviour and corrupt activities to him or her.” While this provision neglects to stipulate what ‘ethical’ or ‘unethical’ behaviour entails, the incorporation of an individual responsible for safeguarding and promoting such standards demonstrates a

⁵³ Constitution of the Republic of South Africa 1996, Chapter 2, Sections 7-39.

⁵⁴ Prevention of Combating and Torture of Persons Act 2013. Retrieved from: <http://www.justice.gov.za/legislation/acts/2013-013.pdf>.

⁵⁵ Chapter 11 of the Constitution

⁵⁶ Section 1 of the Constitution

⁵⁷ Section 205(1) of the Constitution

⁵⁸ Act 68 of 1995

⁵⁹ Criminal Procedure Act 51 of 1977

⁶⁰ Section 49(2) of the Criminal Procedure Act

commitment toward ethical policing. In addition to this, Section 75 discusses ethics and conduct of Senior Management Service (SMS). It states: "Members of the SMS must ... display the highest possible standards of ethical conduct ... set an example to their subordinates and maintain high levels of professionalism and integrity in their interaction with political office-bearers and the public...ensure that they minimise conflicts of interest and ... put the public interest first (and) avoid any conflict of interest that may arise in representing the interests of the Service and being a member of a trade union." By providing additional measures particular to senior officials, SAPS regulations recognise the need for monitoring at all levels. Section 75.2 also stipulates that the National Minister may, after consultation with the Public Service Commission, make determinations to promote ethical conduct amongst the SMS members and supplement the SAPS CC. He or she may also provide guidance and assistance to SMS members as he or she may deem necessary to minimize conflicts of interest and to promote professional conduct. While such measures allocate a significant amount of power and influence to the National Minister, they also ensure SMS members are held accountable to ethical standards and are encouraged to promote ethical policing. Although these measures demonstrate a clear commitment to ethical policing among the SAPS, a hard law CE is still missing from the relevant legislation, without which the law arguably remains ambiguous.

3.4.5 Community Policing

Community Policing was first provided for under the Interim Constitution (1993) as the new prescribed approach to policing in a democratic South Africa. Section 22(1) and (2) directed that an Act of Parliament was to "provide for the establishment of community-police forums in respect of police stations," which would promote accountability and cooperation between the SAPS and local communities, monitor the effectiveness and efficiency of the SAPS, advise on local policing priorities, evaluate the provision of visible policing services, and request enquiries into policing matters in the locality concerned. Additionally, Section 222 stipulated that the Act was to provide for the establishment of an independent complaints mechanism, to ensure that police misconduct could be independently investigated. Thus, the SAPS Act (1995) formally established the Civilian Secretariat for Safety and Security, an Independent Complaints Directorate, and the Community Police Forums (CPFs). These legislative developments marked a shift from an authoritarian approach to a community-orientated policing philosophy. This aimed to go further than the existence of CPFs, adopting a philosophy that recognised that policing is not something done to people, but with people.

Today's CPFs possess the same functions as those outlined in the Interim Constitution. It remains the responsibility of the police, particularly the station, area and provincial commissioners, to establish CPFs at police stations, and area and provincial boards. This means that community consultation and input is therefore structured throughout the SAPS's command and management structure. Chapter 7 of the SAPS Act provides for the objects, establishment, functions and procedural matters of the CPFs and boards. The law states that CPFs should be founded with a view to establishing and maintaining a partnership between the community and the service. However, the specifics of their functions are neglected in the legislation.

3.4.6 Anti-Corruption Policies and Legislation

There are a number of statutes and policies in place in South Africa to combat corruption. The primary piece of legislation in this regard is the Prevention and Combating of Corrupt Activities Act adopted in 2004, which criminalises corruption in broad terms. In 2011, the SAPS adopted the SAPS Anti-Corruption Strategy, the latest of many such strategies aimed at addressing the rampant corruption

that has long plagued the institution.⁶¹ Previous strategies failed for a number of reasons, the most prevalent of which was the failure to effectively implement them. The 2011 SAPS strategy contains both proactive and reactive elements aimed at reducing corruption in the police force.⁶²

While the adoption of the SAPS Anti-Corruption strategy is indicative of commitment within the institution to combat corruption, the policy is regrettably not effective in ending corruption among SAPS officers of all ranks. In interviews conducted as part of the field research for this chapter, current and former police officers described the rampant corruption they witnessed firsthand. In reference to the police of the past and present and the impact of corruption, one interviewee said: "The police was a disciplined organisation, an organisation that is needed now. A structure they then destroyed!" Another interviewee lamented the vulnerability of the police, in particular the Metro police, to corruption. He gave an example of how Metro police officials often harass taxi drivers and demand bribes for allowing them to drive taxis that are not roadworthy. He argued incidents such as these contribute to tainting the image of the police.

In talking about corruption, another interviewee stated that the Metro police (especially Johannesburg Metro Police Department) were notorious for demanding bribes from motorists. He justified this saying: "Police officers don't take bribes because they are criminals but rather because they are struggling." He argued that the pay was below what could be considered a proper living, and therefore they needed to take bribes in order to make ends meet. In some instances, he explained, a community member's complaint is not taken seriously unless there is some monetary value placed on the need for assistance. This interviewee believes that until police officials receive a decent wage, there will always be corruption.⁶³

3.5 Oversight of the Police

3.5.1 South African Human Rights Commission

Section 148 of Constitution provides for the establishment of the South African Human Rights Commission (SAHRC), tasked with promoting respect for human rights, as well as their protection, development and attainment, and with monitoring and assessing violations of human rights in the Republic. Under section 148(2) the SAHRC possesses powers that include investigating and reporting on the observance of human rights, taking steps to secure appropriate redress for violations and carrying out research. As stipulated in section 13.3(a) of the SAHRC Act (2013), the commission is mandated to conduct investigations on its own initiative, or on the receipt of a complaint, whereby after due investigation, if the commission is of the opinion there is substance in any complaint, it must, in so far as it is able, assist the complainant and other persons adversely affected to secure redress and any necessary and appropriate relief. The

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⁶² Institute for Security Studies, "Walking the Talk? The South African Police Service Anti-Corruption Strategy," 9 November 2011. Retrieved from: <https://www.issafrica.org/iss-today/walking-the-talk-the-south-african-police-service-anti-corruption-strategy>

⁶³ See David Bruce (2012) "The Law for Sale: The Endemic Corruption in the Johannesburg Metropolitan Police Department." Johannesburg.: Corruption Watch.

SAHRC is therefore able to receive and deal with complaints against the police, playing an important role in ensuring accountability for misconduct. While the commission has investigated allegations of violations by police,⁶⁴ it is limited in its powers and can only make recommendations to respondents rather than pursue criminal or civil charges.

3.5.2 Civilian Secretariat for Police

In addition to SAHRC oversight, section 208 and 210 (b) of the constitution provide for civilian monitoring of security services through the establishment of a Civilian Secretariat for Police (CSP). Among its objectives, as stated in section 5 of the Civilian Secretariat for Police Act of 2011, the Secretariat has the power to exercise civilian oversight of police, give strategic advice to the Minister in respect of developing and implementing policies, and provide administrative support services to ensure engagement with relevant international obligations, as well as provide guidance to community police forums (CPFs) and associated structures.⁶⁵ Such measures provide hard law commitments to civilian oversight, forging trust and respect between the service and the public, and facilitating community-oriented policing.

3.5.3 Independent Police Investigative Directorate

Police-specific legislation provides additional mechanisms for accountability by way of CPFs and the Independent Police Investigative Directorate. As previously discussed, CPFs aim to facilitate partnerships between the SAPS and communities, promote communication and cooperation, and strive toward the improvement of transparency and police services to the community. While the legislation lacks specifics on their functions, it is indicative of the commitment to ensuring public oversight and accountability of police services. Section 206.6 of the Constitution provides for a complaints body independent of the SAPS to be established under national legislation. The Independent Police Investigative Directorate (IPID) Act of 2011 establishes such a body, which is responsible for ensuring oversight and providing impartial investigations of policing matters, with the power to make disciplinary recommendations. All members of the SAPS are obligated to report to and cooperate with IPID on investigated matters, with National and Provincial Commissioners obligated to initiate disciplinary proceedings and report on their progress. As hard law, the IPID Act establishes strong domestic oversight of the police force and is pivotal to ensuring its compliance with international standards. However, the law lacks explicit provisions stipulating the responsibility of superior officials for the actions of police under their command for abuses they knew – or should have known – about but failed to take action against, as well as provisions designating immunity for officials who refuse unlawful superior orders. These omissions demonstrate that discrepancies remain between international and domestic standards.

The mechanisms discussed above, in combination with many of the reporting methods referred to in other sections of this report, demonstrate a marked commitment in SA legislation to maintain clear and complete records on all matters of police activity in compliance with international standards. While many of these appear in soft law standards, the establishment of IPID under hard law provides an oversight mechanism for police activity with which the SAPS are legally bound to comply.

⁶⁴ See for example, South African Human Rights Commission Report No. FS/2011/0009, “In the matter between Council for the Advancement of the SA Constitution (Complainant) and South African Police Service (Respondent).”

⁶⁵ Civilian Secretariat for Police Act 2011. Retrieved from: http://www.gov.za/sites/www.gov.za/files/a2_2011.pdf.

3.6 Use of Force and Firearms

Domestic legislation pertaining to the lawful use of force by law enforcement in SA remains scattered, with no single piece of legislation focused on the matter. The absence of a definitive piece of legislation has not gone unnoticed, with much of the secondary literature focused on policing in SA calling for the development of a use of force policy by the SAPS, and a ‘professionalization’ of the use of force. The following section takes provisions from various pieces of legislation in order to examine the domestic standards in place in light of the international policing standards enumerated in Chapter 1 of this report.

3.6.1 Rules Governing the Use of Force

Section 49 of the Criminal Procedure Act of 1977 and section 13 (3) (b) of the SAPS Act (1995) are the main provisions regarding the lawful use of force by law enforcement officials in everyday policing. Section 49 of the Criminal Procedure Act, amended for the second time in 2003, stipulates the lawful use of force in effecting arrest. Sub-section 2 states:

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing, but, in addition to the requirement that the force must be reasonably necessary and proportional in the circumstances, the arrestor may use deadly force only if:

- (a)** the suspect poses a threat of serious violence to the arrestor or any other person; or
- (b)** the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.

In keeping with international standards Section 49(2) stipulates that the use of force may only be used when attempts to arrest a suspect without the use of force are resisted and have been exhausted. This mirrors international standards by stipulating that members should, as far as possible, use non-violent means before resorting to force, which may only be used when strictly necessary. Section 49(2) further limits the use of force by stipulating that it may only be applied as “reasonably necessary and proportional in the circumstances, to overcome the resistance, or to prevent the suspect from fleeing.” These limitations reflect international standards by referring to principles of necessity and proportionality, and clearly stipulating the objectives for which the use of force may be used to achieve. Limitations are also provided for in Section 13.3(b) of the SAPS Act which reduces the lawful use of force to the bare minimum reasonable, stating: “Where a member who performs an official duty is authorized by law to use force, he or she may use only the minimum force which is reasonable in the circumstances.” As such, domestic legislation repeatedly stipulates that restraint is to be exercised by members applying the use of force, in compliance with international standards.

On the other hand, subsections 49.2(a) and (b) arguably contradict international standards. While international standards require the use of force (when unavoidable) to “minimize damage and injury, and respect and preserve human life,” permitting the intentional lethal use of firearms only when strictly unavoidable and in order to protect life, subsections (a) and (b) provide for circumstances where any person authorised to arrest or assist in arresting a suspect may exercise the use of deadly force. While these provisions aim to make clear circumstances for the lawful use of deadly force, such grounds rely heavily on the discretion of the arrestor, and as such leave the law vulnerable to manipulation and abuse. Such discrepancies in the law are concerning, especially as domestic law in SA holds no provision stating that the unlawful use of force is unacceptable, or that there may be no exceptions to the unlawful use of force by law enforcement. The lack of such provisions fails to make the arbitrary or abusive use of force by law enforcement a criminal offense under domestic law, arguably harming efforts towards accountability. In light of these provisions, and the reliance they place on the discretion of SAPS members, extensive training in the appropriate use of force is fundamental to the prevention of authority-based violence and the abuse of law enforcement powers.

3.6.2 Training in the Use of Force

Section 32 of the SAPS Act stipulates that the National Commissioner shall determine the training that members undergo. No specifics are included regarding what the training should entail, or whether education in the use of force should be included. Chapter 2 Part 6 of the SAPS Employment Regulations (2008) refers to training in the same regard. While it stipulates institutional arrangements for the training, education and development of members, as well as training assistance, no specifics are provided on the content of law enforcement training, or whether it includes the use of non-violent means as required in international standards. While the legislation examined contains no specifics on law enforcement training, the SAPS Basic and Specialised Training Overview offers some insight.⁶⁶ According to the overview, SAPS members receive both basic and specialised training, with intensity and skill level escalating as the level of threat increases. While the information provided makes no explicit reference to training in the use of non-violent means, the “exit level outcomes” for basic training stipulate that on completion the learner will be able to “balance the constitutional and legal rights of individuals with the competence to legally infringe those rights in the service of maintaining a safe and secure society” and “evaluate situations and select tactical techniques and skills needed to perform policing duties and maintain the safety of the self and others,” suggesting such training presumably occurs. Despite this, legislation still neglects to account for the details, raising concerns over the consistency and transparency of SAPS training. Without such details it is unclear whether SAPS training complies with international standards by ensuring members are equipped with a range of means for differentiated use of force. This presents a significant omission in law enforcement legislation on the use of force.

3.6.3 After the Use of Force

Although Standing Order (General) (SOG) 349 on the Medical Treatment and Hospitalization of a Person in Custody (2010) provides for the assistance and medical aid rendered to injured and affected persons in police custody, legislation which refers to the use of force makes no provision for the assistance or medical aid of persons injured or affected as a result of the use of force by SAPS members prior to arrest. In doing so, domestic legislation fails to meet

international standards by neglecting to include provisions that require the prompt assistance and rendering of medical aid to an injured or affected person. Furthermore, the legislation examined makes no mention of notifying relatives or close friends of the injured or affected persons in such an event either. The absence of such provisions from domestic legislation presents a concerning omission, failing to place members under a legal obligation to tend to the needs of injured and affected persons after the use of force, and thus hold them accountable should such circumstances go awry.

The Independent Police Investigative Directorate (IPID) Act (2011) stipulates incidences that call for an investigation. Among these are: “(a) any deaths in police custody; (b) deaths as a result of police actions; (f) any complaint of torture or assault against a police officer in the execution of his or her duties.” The obligatory investigation of such matters complies with international standards, but the need for a complaint to trigger investigations of torture and assault falls short of international standards, which require prompt reporting and reviews of all cases of death or serious injury. By stipulating submission of a complaint as a prerequisite for investigations of excessive use of force, domestic law fails to comply with international standards and fails to protect those who may be unable or unwilling to file a complaint for fear for their safety, or lack of faith in the system.

3.6.4 Rules Governing the Use of Firearms

SAPS Standing Orders appears to be the only document containing specific rules and regulations governing the use of firearms. While SAPS members are encouraged to follow such policies, failure to do so does not constitute a breach of the law as the Standing Orders document is not considered hard law. The lack of hard law on the use of firearms presents yet another concerning omission from domestic legislation. However, as they are the only accessible standards containing such information, an examination of the existing soft law criteria is critical.

Article 251.2 of Standing Order (SOG) 251 on the Use of Arms states: “When a member is required to perform duties in a neighbourhood or in circumstances perilous to life, he shall be adequately armed for self-preservation or the protection of life and property. He must not, when necessary, hesitate to make use of his arm(s).” Article 251.3 acknowledges the dangers of making hard and fast rules with regard to all the circumstances under which firearms may be used, and as such Article 251.4 states that it is essential members have thorough knowledge of the circumstances under which firearms may be legally used, so that members may confidently act on their own initiative in accordance with the law.

The Firearms Control Amendment Act of 2006, Section 120(3) stipulates circumstances where use of a firearm constitutes an offense. These are: (a) When negligent use or discharge of it causes bodily injury to any person or damage to property of any person, and (b) When it is discharged or handled “in a manner likely to injure or endanger the safety or property of any person or with reckless disregard for the safety or property of any person.” In addition to this, section 120(7) prohibits the discharge of a firearm in a built-up area or public place without good reason.

Yet again, while these standards reflect international rules and regulations, assessing circumstances for the lawful and unlawful use of firearms relies heavily on the discretion of the acting member. Despite this, in light of Article 251.4 of Standing Order 251 on the Use of Arms, domestic mechanisms for the reporting and investigation of the use of firearms, concerns over

accountability may be reduced. In accordance with international standards Article 251.6.1 of the Standing Order stipulates that "however justified a member may consider himself to be in shooting," all acts involving the use of firearms – whether or not the results are accompanied by the loss of life – "will have to be subjected to an investigation." Under such circumstances, domestic law states that "a member ... shall have to prove that he acted with all reasonable care and without recklessness or negligence, but that he was compelled by circumstances to make use of his firearm and that the degree of force and the nature of the weapon used, were not out of proportion to the circumstances necessitating the use of it." In addition to this, Article 251.15 stipulates that if a member, irrespective of the circumstances, fires a weapon, allows a weapon to be fired or orders the firing of a weapon, he must immediately report the fact to his immediate commander, or the next available senior officer so that the scene can be investigated straight away in accordance with protocol stipulated in its subsections. Such provisions comply with the international principles of proportionality and necessity, and fulfil international standards that stipulate all incidents where law enforcement officials use firearms in the performance of their duty must be followed by a system of reporting. The IPID Act of 2011 provides additional measures for investigation. Section 28.1(a) – (h) of the IPID Act stipulates that the Directorate must investigate any complaint relating to the discharge of an official firearm by any police officer. However, of the nine 'matters' which require an investigation by the IPID, only two – 28.1(c) discharge of a firearm and 28.1(f) torture – require a complaint to trigger an investigation by IPID.

Although Standing Order (General) 262.4 (b) stipulates the types of firearms used in the policing of public gatherings and protests, no other accessible legislation prescribes the type of firearms and ammunition members are permitted to carry in everyday policing. While we can presume such regulations exist, the lack of legislation available for public scrutiny on these matters is concerning, and fails to comply with international standards. Additionally, while SA has a comprehensive firearms control regime in place, very little information is available on the regulation of control, storage and issuing of firearms within the SAPS, and procedures ensuring that they are accountable for firearms and ammunition issues to its members. Another concerning omission regards protocol surrounding the actual use of firearms in the field. While SOG 251 includes a number of provisions pertaining to the command and management of the use of firearms, no explicit reference is made to the obligation to deliver a verbal warning prior to the discharge of a firearm, nor an adequate waiting time for a warning to be obeyed (depending on the imminence of death or serious injury). The absence of such information fails to comply with international standards, and raises concerns about the accountability, transparency and consistency of SAPS protocol on the use and control of firearms.

SOG 251.15.5 provides some relief to concerns of accountability by requiring members to file a full factual report following any shooting incident; this will be kept in the relevant member, station, and district commander and commissioner's files, in keeping with international standards. While this SOG contains no provisions stipulating the responsibility of superior officials for the actions of police under their command, if they knew or should have known of abuses but failed to act, the attachment of ranked officials to all factual reports suggests attention is paid to the chain of command. Nonetheless, the lack of concrete provisions stating accountability of commanding officers within the law fails to comply with international standards. SOG 251.15.5 discusses in detail the mandatory content of a full factual report. Among its requirements members must record whether the shooter gave a verbal warning before firing. Although accessible regulations do not hold provisions stipulating an obligation for members to deliver a verbal warning before

the use of firearms, its reference here suggests protocol demands a verbal warning must be given. As such, while we can assume SAPS members are expected to deliver a verbal warning before the use of a firearm, domestic law holds no explicit obligation to do so. While this may be included in legislation beyond the reach of this report, such provisions should be available for public scrutiny, and clearly explicated in domestic law pertaining to police conduct.

3.7 Dispersal of Assemblies

3.7.1 Rules Governing the Dispersal of Assemblies

Section 205.3 of the Constitution of the Republic of SA states that the functions of police are: "To prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law." While public protest is fully within the constitutional rights of the people of SA, SAPS policy states that as "the merits of public protest actions are not always clear-cut," domestic laws, policies and regulation(s) on public order policing aim to work within the framework of international laws on the "right to public gatherings" including human rights standards.

Section 17 of the SAPS Act provides for the establishment of a Public Order Policing (POP) Unit, which is maintained and deployed at the discretion of the National Commissioner. However, the act provides little detail on the criteria for deployment, stating only that the POP Unit will be responsible for restoring public order in circumstances where ordinary SAPS protocol cannot. The POP Unit exists in a different form today, and as such reports have criticized its restructuring, claiming such efforts have impacted its ability to effectively execute its mandate and function under section 17.⁶⁷

In its implementation of Section 17 of the SAPS Act, the SAPS adopted Standing Order 262 – Crowd Management (SOG 262) and the National Municipal Standards for Crowd Management (NMSCM). Both SOG 262 and the NMSCM, which are soft law, include provisions discouraging the use of force, or, where that is not practical, restricting it to the minimum extent necessary. While Section 12.1 of the NMSCM states the use of force must be avoided "as far as reasonably possible," SOG 262 stipulates it "must be avoided at all costs." Both require members to display the highest degree of tolerance and refer to the requirements stipulated in sections 9.1 and 9.2 of the Regulation of Gatherings (RG) Act (1993) for rules and regulations on the dispersal of crowds when the use of force becomes unavoidable. The basic premise of the RG Act is "to ensure that every person has a right to peaceful participation in gatherings with the protection of the police," with the majority of its provisions arguably concerned with regulating the former. Chapter 3, section 9 of the RG Act stipulates the powers of police during public protests and gatherings. Article 9.2 (b) excludes the use of weapons likely to cause serious bodily

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Eye Witness News, "Nhleko: Public Order Policing needs urgent review," 2 September 2015, retrieved from: <http://ewn.co.za/2015/09/02/Nhleko-Public-order-policing-must-be-urgently-reviewed>; University of Cape Town, "Joint Statement: Excessive use of force by the South African Police Service (SAPS)," 23 October 2015, retrieved from: https://www.uct.ac.za/usr/press/2015/MediaRelease_23October2015.pdf.

injury or death, presumably including firearms. However, section 9.2 (d) permits the use of firearms in extenuating circumstances detailed in (i) and (ii). Such provisions reflect international standards and incorporate principles of proportionality and necessity when the use of force is exercised, whilst demonstrating a determination to avoid the use of firearms in public order policing. These principles are similarly reflected in SOG 262 and the NMSCM, both of which provide more detail on the prohibition of certain weapons. Comparatively, these soft law documents provide more insight into rules and regulations of public order policing, and provide necessary clarification to the many gaps that exist in the RG Act.

Although both SOG 262 and the NMSCM stipulate all members deployed for public order policing purposes must be trained in the management of crowds, neither stipulates what such training should entail. However, both provide for the debriefing and reporting of all police activities after each event or gathering, which trainers must attend. Good practice and shortcomings must be recorded as part of a learning process to enhance good skills and address or prevent recurrences of identified mistakes. As this is designed to take place in partnership with trainers, these provisions demonstrate a marked effort for progress and the development of crowd management techniques. The emphasis on reporting also bodes well for accountability, although no explicit mention is made with regard to repercussions following the abuse of policing powers during crowd management functions. It also must be kept in mind that, as they are soft law principles, SAPS officers are not legally bound by such provisions. Regrettably, there are numerous examples of SAPS officers using excessive, in some cases even lethal, force to disperse lawful peaceful assemblies.

3.8 Conclusion

Overall, domestic legal standards for the protection and promotion of human rights by South African police are comprehensive. However, policy documents aimed at clarifying the scope and content of these rules and regulations rely heavily on soft law documents and leave much room for interpretation and the discretion of police officers. The fact that there is such reliance on such soft law documents, which are not legally binding, raises questions about the potential to hold offending police officers accountable. Nonetheless, the legal commitments for robust oversight of the actions of the police demonstrates that there are strong mechanisms for ensuring accountability of police officers who fail to uphold, respect and protect applicable international human rights standards as well as domestic law.

However, while the legal and the institutional frameworks are highly developed in South Africa, police officers still brutalize and extort their compatriots, sometimes in overt and spectacular ways. This was the case in Marikana, where 34 miners were shot dead, though sometimes it is in more mundane forms on the streets of urban centres. Hence, continued work in South Africa must include a focus on implementation of human rights standards, particularly in urban centres, where a perpetual war on gangs and crime legitimizes state and police violence. And it must focus on protecting the gains that have been made by human rights organizations against a backlash that demands some provisions are rolled back. Reverting to military titles is an indication of things that might come, as it has in the Philippines, which is the topic of the next chapter.

Philippines

4. Philippines: Legal and Policy Framework

4.1 Overview of Policing System and Structure

In the Philippines, the structure of the policing system is somewhat complex. Law enforcement functions are carried out by 30 national agencies and local government units across the country, some of which focus on criminal investigation and others on police actions during arrest, search and seizure, while some are mandated to carry out both functions. The main law enforcement agency with a mandate for both criminal investigation and police action is the Philippines National Police (PNP), a national police force with a civilian character that is administered by the National Police Commission (NAPOLCOM). Institutionally, the PNP and NAPOLCOM both fall under the Philippines Department of Interior and Local Government, but this is for administrative purposes only, and functionally NAPOLCOM is the body responsible for control of the PNP.

The PNP is made up of an extensive network of regional, provincial, municipal and district offices and police stations. In light of the vast territory that makes up the Philippines, which is an archipelagic country including more than 7000 islands, local government units (LGUs) play a key role in connecting all areas of the Philippines to the national government, and as such serve as agencies of the national government in many functions, including law enforcement. Local government officials' operational supervision and control of PNP officers is limited to supervising the day-to-day functions of PNP officers. In practice, LGUs, as well as other law enforcement agencies, depend on PNP officers to conduct arrests, seizures and crime scene investigations. At the local government level, the PNP also plays a role in local peace and order councils, which are responsible for developing and monitoring implementation of plans and strategies for improving peace and order in their jurisdiction. Local peace and order councils

are also responsible for evaluating applications for the PNP and recommending candidates to NAPOLCOM.

Adding to the complex nature of the policing structure in the Philippines is the existence of 'tanods', also known as barangay police officers or BPSOs (barangay peace and security officers). A barangay is the smallest government administrative division in the Philippines, and there are approximately 42,000 barangays in the country. Many barangays are made up of several hundred or thousand people, while others are significantly larger. Barangays are headed by elected officials, namely a barangay chairperson or captain (punong barangay) who is aided by a barangay council. The council is considered a Local Government Unit (LGU), and among its functions is the Barangay Justice System (BJS, Katarungang Pambarangay) which is an alternative, community-based mechanism for resolving disputes between residents of a barangay. The BJS was established by Presidential Decree 1508, and is regulated by the Local Government Code of the Philippines.

While there are certain complaints which the BJS cannot address⁶⁸, it can resolve a broad range of disputes, and such cases must be brought to it before being considered in a court.

Furthermore, the barangay structure includes a law enforcement element, barangay tanods, which are the lowest level of law enforcement in the Philippines, though they do not form part of the PNP structure. Barangay tanods are community brigades made up of civilian volunteers who are appointed by the punong barangay upon recommendations made by the barangay peace and order committee. Tanods are divided into teams made up of a team leader and 2-4 members. There is a maximum of 20 tanods permitted per barangay. In practice, the appointment process of tanods is highly politicized as those selected are usually close family or friends with barangay council officials. In light of the role played by tanods in policing in practice in the Philippines, commentators have argued that policing in the Philippines is "subsumed under local, electoral politics and family and community relations."⁶⁹

Historical Developing of Law Enforcement in the Philippines

The PNP as it is known today evolved from the former Philippines Constabulary, a gendarmerie force responsible for law enforcement, and the Integrated National Police, the municipal police force for cities and large towns. In 1990, with the adoption of Act No. 6975, the Philippines Constabulary and Integrated National Police were merged to form the Philippines National Police as a civilian body under the control of the National Police Commission. The aim of this reform process was to decentralize and demilitarize the police force, and was in response to the serious abuses and violence carried out by the police during the Marcos dictatorship of the 1970s. However, the PNP administration today is highly centralized, which poses many challenges to its effective functioning, as described in further detail below.

As a result of the colonial history of the Philippines, there has long been a connection between political power and policing, as the police force was initially established to maintain the power

of the ruling elite before being redesigned to prevent crime and enforce the law.⁷⁰ However, the politicization of the police force and its role in protecting the interests of the ruling elite has in many ways been maintained despite the reform process. According to commentators Jensen and Hapal, "[I]n many municipalities and provinces, the police came to serve ... a democracy in which (landed) elites manage to secure their hold on state power through electoral processes. Law enforcement agencies play a central role in this where the municipal mayor can assert authority over the PNP and the punong barangay exerts control over the lowest level of the state law enforcement system, the Barangay Justice System."

Over the years, the PNP has exerted efforts to improve itself and make it more effective in fulfilling its mission to "serve and protect" the population. In 2013, the police launched a program to promote 'human-rights based policing' as it acknowledged that a "police organization that resorts to unbridled force is doomed to fail."⁷¹ The core principles and values of this endeavour are summarized through its CODE-P credo, which stands for Competence, Organizational Development, Discipline, Excellence and Professionalism. Achieving this intention requires quality rights-based trainings and seminars; the designation of accessible Human Rights Desk Officers down to the station level; strict adherence to policies that give premium to human dignity; the use of up-to-date investigative technology that delivers immediate, impartial and credible results; and professionalism, which is the end product of all human rights-based initiatives at all levels of community service and peacekeeping operations.⁷²

A key component of this policing paradigm is the element of 'community participation' which, in the mind of the police, entails multisector consultations, dialogues, and other activities that encourage and enable citizens and sectoral representatives to interact with the police and provide inputs needed for the development of policies, plans, strategies, and programs. It also includes the formation of police auxiliary groups consisting of civilian volunteers and other PNP-accredited civilian organizations for peacekeeping and anti-criminality operations. A visible and arguably much accessed aspect of this program is the women and children protection desk (WCPD) in the precinct or at police station level.

The police leadership has acknowledged that good police-community relations serve more purposes than simply improving the PNP's public image. Rather, they are seen as the foundation to building a network of civilian supporters that can assist the police in the monitoring of community safety, gathering of information that can be useful in the detection and investigation of crimes, and other police tasks that need the cooperation and support of the citizenry. In 2015, the NAPOLCOM embarked on another program known as the Community and Service-Oriented Policing or CSOP to "ensure safe, secure, and productive communities." Its proponents call it an approach that facilitates the transition from a traditional, reactive, incident-driven model of policing which seeks to identify and dynamically resolve community problems, and say that it aims to build and strengthen collaborative partnerships between communities and local executives to promote public order and safety.⁷³

70 Ibid.

71 Police Director General Alan Madrid Purisima, 2013, Message on the launching of the "PNP Guide-book in Human Rights-Based Policing".

72 Ibid.

73 <https://napolcom5.wordpress.com/2015/05/16/press-release-napolcom-to-pilot-test-community-and-service-oriented-policing-system-in-puerto-princesa-city/>

68 These include (i) cases brought by or against the government or an instrumentality thereof and/or public officers or employees, (ii) offenses punishable by imprisonment exceeding 1 year or a fine exceeding P5,000 (\$106), (iii) disputes involving real property located in different cities unless both parties agree to BJS jurisdiction, (iv) cases involving the Agrarian Reform Law, (v) cases involving labour disputes, and (vi) actions to annul judgment on a compromise.

69 Steffen Jensen and Karl Hapal, "Policing Bagong Silang: Intimacy and Politics in the Philippines."

However, public distrust continues to haunt individual police officers and their organization. Senator Panfilo Lacons, who served as the head of the Philippine National Police before he was elected to parliament, believes that the biggest challenge facing the police is the “PNP itself” – referring to the apparent lack of discipline and widespread corruption among police officers that would require “internal cleansing” to resolve.⁷⁴ Those who try to parry to this observation argue that in the Philippines, incidents of crime and violence involving policemen are individual acts of misbehaviour – a stance which holds that there are a few ‘bad apples’ in every barrel. Terms like ‘scalawags’ and ‘erring policemen’ are commonly used to describe cops who have broken the law. The fact is, these events are commonplace and indicate a much deeper problem, as well as a complete refusal of the senior leadership to treat the situation with the seriousness it deserves.

A focus group study conducted by a civil society organization in a poor urban neighbourhood in Manila has articulated the widely held public view that there is a marked difference between the official ‘by the book’ way and the ‘how we really do it’ way among police authorities. The general public perception is that planting evidence, gunning down cell phone snatchers or drug users and protecting other crooked cops are accepted, and even condoned, practices within their institution.

Think about how this actually works. A policeman, or a group of policemen, makes an arrest, brings the subject to the station and locks him up, and then conducts business-style negotiations with the subject or his relatives, ending with the payment of “bail” and the release of the subject. All going on right inside the police station. This happens because higher authorities are not supervising. Or if they do, they are also part of the usual procedure, reeking with abuse of authority, use of threatened and actual violence, and corruption. Procedures already exist to prevent this kind of activity, but they are not being followed, and they are not being enforced. Officially, locking a person up in a police station’s detention cell involves more than one person, and a bit of paperwork. At the very least, there is always supposed to be a blotter entry and an incident report, and that means that the station commander or shift supervisor must be involved.

This view validated results of a study on Civilianization and Community Oriented Policing in the Philippines almost fifteen years ago that concluded that the police in general continued to be regarded in bad faith – they are seen as poor role models who are unable to fulfil their duties because of a lack of lack integrity, competence and discipline. The study argues for a ‘demilitarized’ PNP where there is transparency as well as greater consultation and participation by communities. It notes that community policing is a working partnership between the police and the community to prevent crime, arrest offenders, find solutions to recurring problems and enhance the quality of life.⁷⁵

A multitude of laws, codes of conduct, ethical manuals and operational procedural guidelines exist to regulate the conduct and functioning of law enforcement in the Philippines. As described

above, the main agencies responsible for policing in urban settings, and in particular in the settings which are the areas of focus for this project, are the Philippines National Police and the barangay tanod brigades. While the international legal framework is applicable to all public officials in the Philippines, the domestic legal framework applicable to the PNP and barangay tanod brigades are significantly different, despite the broad overlap in their function.

4.2 Applicable International Law

The Philippines is party to a number of key international human rights treaties, including the ICCPR, which it ratified in 1986, the CAT, also ratified in 1986, and the OPCAT, ratified more recently in 2012.

Under Article II, Section 2 of the Philippines Constitution, “[t]he Philippines ... adopts the generally accepted principles of international law as part of the law of the land.” Accordingly, the international human rights law applicable to the Philippines has the force of domestic law, and can be invoked by Filipino courts to settle disputes in the same way that domestic legislation would be used.⁷⁶ What is not clear, however, is whether international law has supremacy over domestic law where there are contradictions. However, the Vienna Convention on the Law of Treaties has made clear, and it is also a generally accepted principle of international law, that a state may not invoke its domestic law as a justification for failing to adhere to its treaty obligations.⁷⁷

The Philippines is particularly interesting in that it has incorporated the UN Code of Conduct for Law Enforcement Officials (adopted by the UN General Assembly resolution 34/169) in its entirety as part of the Ethical Doctrine Manual of the PNP under Chapter VI, Section 4. This means that the Code of Conduct is applicable to all PNP officers. Unfortunately, this section of the Ethical Doctrine Manual only makes mention of the Code of Conduct and does not include the code in its entirety, making it difficult to ensure that PNP officers are familiar with its requirements. Nevertheless, the inclusion of the Code of Conduct, a non-binding UN instrument, is significant.

4.3 Domestic Law and Policies

This section focuses on the domestic law and standards applicable to the PNP and barangay tanods. It is important to note here that while barangay tanods perform a law enforcement function, the regulations and guidelines applicable to the PNP described below are not applicable to barangay tanod brigades.

The PNP as it exists today was established following the 1987 Philippines Constitution, which provides that “the state will establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law.”⁷⁸

⁷⁶ Joaquin G. Bernas, *Foreign Relations in Constitutional Law*, (1995), p. 19.

⁷⁷ Vienna Convention on the Law of Treaties, Article 27.

⁷⁸ Philippines Constitution, 1987, Article XVI, Section 6.

⁷⁴ “Ping: PNP’s problem is PNP itself,” Manila Standard, January 6, 2015, <http://manilastandardtoday.com/news/-main-stories/top-stories/167483/ping-pnp-s-problem-is-pnp-itself.html>

⁷⁵ <http://journals.upd.edu.ph/index.php/kasarinlan/article/view/1650>

In 1990, the Philippines National Police Act, No. 6975, was adopted. The full title of the act is An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for Other Purposes.⁷⁹ This act sets out the organizational structure of the PNP, as well as its powers and functions, qualifications for appointments, professional evaluation systems and the role of local executives in the administration of the PNP. The act also establishes the administrative disciplinary machinery and procedures for the PNP, as well as the National Police Commission, responsible for administrative control and operational supervision of the PNP. In 1998, the Philippines legislature adopted Act No. 8551, aimed at reforming and reorganising the PNP (hereafter Police Reform Law), which amended the 1990 PNP Act. The specific provisions of the 1990 Act and the 1998 Reform Act will be discussed in more detail through the course of this chapter.

Pursuant to Section 5 of the 1998 Police Reform Law, the National Police Commission is mandated to “develop policies and promulgate a police manual prescribing rules and regulations for efficient organisation, administration and operation” as well as to “examine and audit, and thereafter establish the standards for such purposes on a continuing basis, the performance, activities and facilities of all police agencies throughout the country.” The manual, developed and adopted by the commission, is the PNP Operational Procedures Manual, which provides clear instructions and guidance on the functioning of members of the PNP. According to the PNP website, the manual must be “strictly adhered to in all aspects of police work”⁸⁰ but the manual itself is not binding legislation. While the manual contains an elaborate and extensive set of rules regarding the conduct of members of the PNP in the discharge of their function, these do not have the status of being legally binding. However, these rules are indicative of the official policies of the PNP and the operating procedures to be followed by its members, and therefore are included in this examination of the PNP’s compliance with the international human rights obligations applicable to the Philippines.

In addition to the above-mentioned legislation and Operational Procedure Manual, the PNP is also guided in its function and management by a number of non-binding codes of conduct, guidebooks and manuals. This chapter also examines the content of these guides and manuals, and their compatibility with international human rights standards for policing. Specifically, these include the Philippines National Police Guidebook to Human Rights Based Policing, which outlines the human rights-based approach to policing in the Philippines⁸¹ and the Philippines National Police Ethical Doctrine Manual.⁸² Chapter 1, Section 1-2(b) of the Ethical Doctrine Manual makes clear that it applies to all uniformed and non-uniformed personnel of the PNP “unless stated otherwise.” Section 2 of the same chapter further states that “all members of the Philippine National Police shall abide, adhere to and internalize the provisions of the Ethical Doctrine.” It should be highlighted that the UN Code of Conduct for Law Enforcement, adopted by the UN General Assembly resolution 34/169, has been incorporated in its entirety into the Ethical Doctrine Manual of the PNP under Chapter VI, Section 4. Unfortunately, this section of the manual only makes mention of the Code of Conduct and does not include it in its entirety, making it difficult to ensure that PNP officers are familiar with its requirements.

⁷⁹ The full text of the act can be found at: http://www.lawphil.net/statutes/repacts/ra1990/ra_6975_1990.html.

⁸⁰ PNP website, <http://pnp.gov.ph/portal/index.php/component/content/article/25-about-pnp/organization/2627-pnp-operational-procedures-manual-2>.

⁸¹ Philippines National Police Human Rights Guide (HRB Policing): http://www.hss.de/fileadmin/suedostasien/PNP-Guidebook_Human-Rights.PDF.

⁸² Philippines National Police Manual, Ethical Doctrine Manual: <http://proarmm.pnp.gov.ph/downloads/EthicalDoctrine.pdf>.

There are significantly fewer pieces of legislation, manuals and guidelines in place to regulate the conduct of barangay tanods. As detailed below, tanods are regulated by the Local Government Code, adopted through Act No. 7160 in 1990. However, this code is limited to providing the legal basis for the establishment of a tanod brigade. It doesn’t regulate the functions or conduct of tanods in any way. A circular from the Local Government Agency provides further clarification regarding the functions and role of tanods, but this does not include any guidance to ensure their conduct is in line with international human rights standards. The Local Government Code and the circular also do not include any information regarding disciplinary procedures for misconduct by barangay tanods.⁸³

Both PNP officers as well as barangay tanods are bound by law to comply with the Code of Conduct for Public Officials, which was adopted through Act No. 6713 of 1989.⁸⁴ This Code of Conduct sets out the broader principles by which all public officials must conduct their roles, including transparency and anti-corruption, commitment to public interest, professionalism, political neutrality and commitment to democracy.

4.3.1 Organisation and Functions of Law Enforcement

As mentioned above, law enforcement functions are carried out by a number of agencies in the Philippines. As the focus of this project is policing in the form of crime prevention and investigation in urban settings, this section is limited to a description of the organizational structure of the PNP and the barangay tanod brigades, which are largely responsible for the day-to-day policing functions in the Philippines.

Philippines National Police (PNP)

The role and function of the PNP is set out in Act No. 6975. According to Section 24 of this act, the role of the PNP is to “enforce all laws and ordinances relative to the protection of lives and properties” and to “maintain peace and order and take all necessary steps to ensure public safety”; “to exercise the power to make arrest, search and seizure in accordance with the Constitution and pertinent laws”; and to “perform such other duties and exercise all other functions as may be provided by law.” A number of instruments further elaborate on the mandate of the PNP. For example, the Police Officer’s Pledge, as found in Chapter V of the Ethical Doctrine Manual of the PNP, includes “I will uphold the Constitution and obey legal orders of the duly constituted authorities.” In addition, the incorporation of the UN Code of Conduct for Law Enforcement Officials through the EDM further entrenches the principle of legality in the functioning of the PNP, as Article 1 requires all law enforcement officials to at all times “fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts.” As a result of these laws, regulations and guidelines, it is clear that PNP officials are bound, both in law and policy, to respect the principle of legality, in line with international standards.

Institutionally, the PNP falls under the Philippines Department of the Interior and Local Government (DILG), but it is under the administrative control of the National Police Commission or NAPOLCOM. The commission is a statutory body that is chaired by the secretary-general of the DILG. NAPOLCOM is responsible for monitoring PNP performance with regard to all police operations. At the head of the PNP is the Chief of Police, assisted by an administrative deputy and an operational deputy, both

⁸³ <http://igupdates.weebly.com/1/post/2013/12/barangay-tanods.html>

⁸⁴ Philippines Law Enacting Code of Conduct and Ethics for Public Officials: <http://pnp.gov.ph/portal/index.php/pnp-members/useful-references/174-republic-act-no-6713>.

of whom are appointed by the President. The PNP has its national headquarters in Manila, as well as regional offices headed by regional directors for peace and order; provincial offices headed by a provincial director; and PNP stations at city or municipal level. According to the Local Government Code, the municipal mayor is deputized as the representative of the National Police Commission, and as such is mandated to exercise "general and operational control and supervision over local police forces in the municipality in accordance with Act No. 6975."⁸⁵

The functions of the PNP include:

- Enforce all laws and ordinances relative to the protection of lives and properties;
- Maintain peace and order and take all necessary steps to ensure public safety;
- Investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution;
- Exercise the general powers to make arrest, search and seizure in accordance with the Constitution and pertinent laws;
- Detain an arrested person for a period not beyond what is prescribed by law, informing the person so detained of all his rights under the Constitution;
- Issue licenses for the possession of firearms and explosives in accordance with law; and
- Supervise and control the training and operations of security agencies, including issuing licenses for security agencies, security guards and private detectives to operate.⁸⁶

PNP officers are therefore responsible for investigating crime, arresting suspects, and conducting search-and-seizure operations authorized by a judge or by law, as well as preventing crime and other police actions. To carry out these functions, PNP officers are equipped with pepper spray, handcuffs and a firearm.

Barangay Law Enforcement

Barangay tanods, also known as barangay police officers or BPSOs (barangay peace and safety officers) are the lowest level of law enforcement in the Philippines, and while their function includes maintaining law and order, they do not form part of the PNP structure although they do cooperate with the PNP. Tanod brigades are made up of volunteers appointed by the barangay council, and serve as the implementing mechanism for the local peace and order councils of the barangay. Tanods receive an honorarium or allowance for their role, as well as insurance and other benefits such as education grants for their children.⁸⁷ The appointment, duty and functions of the tanod are regulated by the Local Government Code.

⁸⁵ Sec. 444, Article 1(2)(v), Local Government Code, Act No. 7160 (1990), available at: <http://www.chan-robles.com/localgov3.htm#Vh0fxcuqqko>.

⁸⁶ Section 24, Law No. 6975.

⁸⁷ <http://lgupdates.weebly.com/1/post/2013/12/barangay-tanods.html>.

The functions of tanod brigades include:

- Assisting barangay officials with crime prevention and promotion of public safety;
- Patrolling the barangay;
- Reporting crimes to the barangay council; and
- Monitoring the presence and/or activities of suspicious persons, criminals or other lawless elements within their jurisdiction and reporting them to the barangay council.

Tanods are equipped with night sticks, tear gas and handcuffs. It is therefore clear that in practice, the tanods play the role of police in the daily lives of citizens in the barangay they are responsible for. Tanods are appointed by the punong barangay with the approval of the municipal mayor, both political figures, which makes the process of tanod appointment inherently politicized. In practice, those appointed as tanods are usually relatives or close friends of those responsible for their appointment. Jensen and Hapal, writing on the intimacy of policing by tanods, note that it is "controlled more or less by a small circle of individuals ... related to each other by blood, kinship ties or common history."⁸⁸

4.3.2 Code of Conduct

The Philippine National Police Manual (2014) has underscored that PNP members should perform their duties with integrity, intelligence and competence, applying their specialized skills and technical knowledge with excellence and expertise. Section 3-2 of the Code of Conduct provides a list of principles meant to govern the professional conduct of all police officers, including commitments to:

1. A democratic way of life and values, and to public accountability. This entails an obligation to uphold the Constitution at all times, and to be loyal to the country, its people and the organization;
2. Place public interest ahead of personal interest, including preventing the "malversation" of human resources, government time, property and funds;
3. Non-partisan provision of services to everyone regardless of party affiliation;
4. Regular physical exercise and an annual medical examination in order to stay physically and mentally fit;
5. Guard the confidentiality of classified information against unauthorized disclosure, including contents of criminal records, identities of persons who may have given information to the police in confidence and other classified information or intelligence material;
6. Social awareness through active involvement in religious, social and civic activities to enhance the image of the organization;

7. Shun patronage and seek self-improvement through career development, avoiding recommendations from politicians and other persons of influence to advance one's career, and with regard to assignments, promotions and transfers or those of other members of the force;
8. Proper care and use of public property issued for their official use or entrusted to their care and custody;
9. Respect human rights in the performance of duty. No PNP members may inflict, instigate or tolerate extra-judicial killings, arbitrary arrests, torture or other cruel, inhuman or degrading treatment, and may not invoke superior orders or exceptional circumstances such as a state of war, a threat to national security, internal political instability or any public emergency as a justification for committing such human rights violations;
10. PNP members should perform their duties with dedication, thoroughness, efficiency, enthusiasm, determination, and manifest concern for public welfare;
11. They should help in the development and conservation of natural resources;
12. They should conduct themselves properly at all times, keeping within the rules and regulations of the organization;
13. They should be loyal to the Constitution and the police service as manifested by their loyalty to their superiors, peers and subordinates as well;
14. They should obey lawful orders and be courteous to superior officers and other appropriate authorities within the chain of command; and
15. Commanders and directors are responsible for the supervision, control and direction of their personnel at all times.

4.3.3 Code of Ethics

As mentioned above, Philippines legislation does not include prohibition of discrimination based on all grounds, although section 4(c) of the Code of Conduct and Ethical Standards for Public Officials and Employees (Act No. 6713) includes an overarching prohibition of discrimination by public officials, emphasizing in particular discrimination against "the poor and underprivileged."⁸⁹ Section 4(d) prohibits discrimination based on political grounds.⁹⁰ These sections do not elaborate further on the grounds for prohibited discrimination.

⁸⁹ Section 4(c), Act No. 6713: "Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs."

⁹⁰ Section 4(d), Act no. 6713: "Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference."

4.3.4 Community Policing

The legislation establishing the PNP makes clear that it is designed to be a "community and service oriented agency."⁹¹ This approach is also recognized in Section 3 of the Ethical Doctrine Manual of the PNP, which sets out the fundamental principles that must be adhered to by members of the PNP. Principle 4 calls on PNP officers to achieve cooperation with the public and to "recognize that when the community cooperates and assists the police, it diminishes proportionately the need for the use of physical force and compulsion in achieving law enforcement objectives."⁹²

In order to ensure the community and service oriented approach of the PNP, the Directorate for Police and Community Relations (DPCR) was established with a mandate to "develop, guide and steer a 'community and service oriented' police organization in forging relationship with, informing, persuading, shaping perception of, and mobilizing the communities towards the need for respect for laws, maintenance of peace and orderliness, and safety of environment."⁹³ The objectives of the DPCR are to "restore public confidence in the PNP" and to "improve community participation and inter-agency coordination in support of police activities."⁹⁴ The DPCR's functions to achieve these objectives include:

- Formulating Police Community Relations (PCR) plans, programs and policies geared towards enhancing community and citizen participation in support of the operational plans of the Philippine National Police;
- Developing plans and programs to improve the image of the government in general and the PNP in particular;
- Conducting studies and research projects to assist national policy-makers in developing laws, plans and programs that are community-based, service-oriented and gender sensitive, and are geared towards the maintenance of peace and order and the enhancement of public safety; and
- Forging relationships with communities and assisting other government agencies and non-government organizations (NGOs) in the conduct of community mobilization activities contributory to the maintenance of peace, order and safety.⁹⁵

The establishment of barangay tanods is one way that community oriented policing has been implemented in the Philippines. Tanods are usually appointed because of their knowledge and connection to the community.

Peace and order in local communities translates to a sense of a shared feeling of security among the citizens. People who have this sense of security are more likely to participate in community activities that aim to improve the livelihood and wellbeing of all. In this sense, the maintenance of peace and order is part of the foundation for -PNP genuine community-based development. The Philippine National Police has determined that 'people vigilance' and 'trust in the police' are the needed components for maintaining peace and order in communities. They acknowledge

⁹¹ Act No. 8551, Section 2.

⁹² Ethical Doctrine Manual, Section 3(4).

⁹³ DPCR Website: <http://dpcr.pnp.gov.ph/index.php/about-us/mandate>.

⁹⁴ Ibid.

⁹⁵ Ibid.

that most, if not all, community members know the real situation in their respective areas, even lawless elements and lawless activities for that matter. Therefore, they are considered the best source of accurate information. If this information remains unreported, illegal activities proliferate and criminals thrive. Conversely, if they have faith in their police, they will report these matters, criminals will be neutralized and lawless activities stopped.⁹⁶

The basic operational area of a tanod is its own barangay. However, a barangay tanod may be deployed outside its jurisdiction if requested in writing to assist in another barangay by its punong.

4.3.5 Human Rights Training

Law enforcement officers, both from the PNP and at the barangay level, receive human rights training. Indeed, the PNP has adopted a Guidebook on Human Rights Based Policing as well as a Compendium of Human Rights Laws (national and international). Training for PNP officers on human rights standards and human rights-based policing has been carried out through the Commission on Human Rights, as well as through international NGOs including the Hanns Seidel Foundation.⁹⁷

The PNP conducts regular recruitment programs, depending on the annual budget. The entry level for non-commissioned officers is the rank of Police Officer 1 or PO1. New recruits undergo a Public Safety Basic Recruit Course of six months, followed by a Field Training Program, also six months. But prior to their actual duty there is another mandatory special training course called PNP SCOUT or PNP Special Counter-Insurgency Unit Training, which can be anything from 45 days to five months, and which skills them in military tactics for future assignments, whether out in the field or at the police station. Commissioned officers for the PNP come via three routes: the Philippine National Police Academy; through 'lateral entry' for specialized disciplines and requirements such as criminologists, lawyers, doctors, engineers, chaplains and other technical positions; and third, by rising through the ranks.

Human rights education is integrated in the curriculum of mandatory training programs. It is incorporated in the regular conduct of a Police Continuing Education and Information (PICE) program in all PNP Offices nationwide as well. Subjects include the 1987 Constitution; UN Code of Conduct for Law Enforcement Officials; UN treaties and other international obligations on human rights (ICCPR, UDHR, CRC, CEDAW, CAT, Geneva Conventions and IHL Protocols, etc.) Domestic instruments (RA 7438, Rules of Court, Rules on the Writ of Amparo, etc.); and Administrative Issuances (POP, PNP Implementing Guidelines on Human Rights, etc).⁹⁸

Barangay tanods also receive human rights training, provided through the barangay human rights action committee, as described above. In addition, the barangay tanod professionalization program, implemented by the DILG, includes a human rights component provided by the Commission on Human Rights. Civil society organizations with human rights programs in certain barangays also provide trainings for barangay tanods. Topics include basic concepts and principles on human rights and inputs on specific themes such as children's rights, women's rights, and torture prevention.

4.3.6 Anti-Corruption Policies and Legislation

Corruption is a problem among law enforcement agencies in the Philippines, and particularly within the PNP. While the PNP has representatives spread out across the vast territory of the country, it is an agency with a highly centralized administration. More than 95% of the national government's appropriations for the PNP are centrally managed, and less than one quarter of the amount designated to support field police operations is actually allocated to field offices.⁹⁹ As a result, police are often dependent on the resources they receive from the LGUs in which they maintain peace and order. These contributions are often not documented in a transparent manner and can vary widely from one place to another, which can result in corrupt practices.

Furthermore, police salaries are extremely low across the Philippines. According to an Asian Development Bank report from 2009, "60% of police officers in the Philippines live below the poverty line and most live in squalid slums."¹⁰⁰ In such conditions, circumstances are ripe for police to abuse their positions of authority and attempt to extort bribes from those they engage with.

Corruption among barangay tanod brigades is also a problem. As volunteers, tanods receive no financial payment for their work but, as mentioned, there are rewards such as honoraria and education grants for their children. In most cases, tanods are close relatives or friends of the punong barangay who appointed them. The absence of any salary and the methods of appointment create a situation in which corruption can thrive. There appear to be no safeguards in place to prevent such corruption from taking place.

These problems exist despite legislation in place criminalizing corruption by public officials. Articles 210 and 211 of the Philippines Criminal Code criminalize direct and indirect bribery, carrying punishments of varying periods of imprisonment and fines. Article 212 criminalises corruption of public officials. Articles 213 to 216 criminalise fraud and other prohibited transactions. In addition to these Criminal Code provisions, the Ethical Doctrine Manual and the Code of Conduct for Public Officials also include anti-corruption language. It is therefore clear that there is strong anti-corruption legislation and policies in the Philippines which are in line with the international standards.

Corruption in the PNP and related agencies stems primarily from what resource aggregator website GlobalSecurity.org calls "the unholy trinity of gambling, drugs, and prostitution that beset law enforcement organizations worldwide". PNP corruption is exacerbated by Philippines law, which gives local officials control over the appointment and dismissal of local PNP commanders, encouraging corrupt city mayors to make common cause with dishonest police commanders.¹⁰¹ The anti-corruption watchdog Transparency International once ranked the PNP as the most corrupt institution in the country, according to its Global Corruption Barometer¹⁰²

96 PNP Memorandum Circular 2015-009, April 30, 2015

97 <http://www.hss.de/southeastasia/en/philippines/news-events/2014/philippine-national-police-human-rights-affairs-office-conducts-rights-based-training-for-regional-human-rights-officers-in-mindanao.html>
http://pcij.org/blog/wp-docs/santiago_hr.pdf

98

99 ADB Background Note on the Justice Sector of the Philippines, available at: <http://www.adb.org/sites/default/files/publication/27525/background-note-justice-sector-phils.pdf>.

100 Ibid.

101 <http://www.globalsecurity.org/intell/world/philippines/npnp-corruption.htm>

102 <http://www.philstar.com/headlines/2013/07/11/964084/npnp-most-corrupt-agency-survey>

Low salaries are named as the main cause of police corruption. In February 2011, Journalist Joel D Adriano wrote in the Asia Times:

Salaries of cops are not commensurate to the risks they face. A low-ranking police officer makes only 12,500 pesos (US\$290) a month and approximately 60 percent of the police force are estimated to live below the poverty line. Many live in squatter settlements and cannot afford to send their children to school, according to a study by the University of the Philippines and the CORPS Foundation. Half of the police officers they surveyed said that they have no bank savings. Lean economics "leaves members of the police force vulnerable to corruption, bribery and criminal activities," according to Pacific Strategies and Assessments, a global consulting firm.¹⁰³

Apart from corruption, many cops undertake investigative short cuts that often employ physical abuse, the planting of evidence, and sometimes -- allegedly under guidance from local elected officials -- the extra-judicial killing of criminal suspects. The PNP suffers from a potent combination of malfeasance (misconduct or wrongdoing) and misfeasance (improper and unlawful execution of an act that in itself is lawful and proper) within an institutional culture of poor management. The results are not only corruption but also a level of incompetence that is often indistinguishable from corruption. Individual PNP members are courageous, but -- especially at junior levels -- tempted by the opportunities (and, given the poverty-level wages, the virtual necessity) to "learn how to earn" from corrupt officers in the field.¹⁰⁴

The PNP has yet to make much headway into cases of malfeasance, even when its intelligence and surveillance operations collect proof of cops planting evidence or extorting bribes from criminal suspects. According to experienced observers both within and outside the PNP, the Internal Affairs Service (IAS) has a relationship that is too close and collegial with the force it is supposed to investigate. PNP sources allege the highest levels of the PNP Command Staff and elected officials often pressure IAS to drop or whitewash investigations, and then use dirty cops for their own political ends.¹⁰⁵

Considering the magnitude and complexity of the corruption problem, the PNP determined that a 'holistic' approach was needed to eliminate the menace. This decision paved the way for the formulation of the PNP Anti-Corruption Plan in 2005. The police authorities, however, acknowledged that although excellent on paper, the police organizations "cannot go the distance." The proponents of the Anti-Corruption Plan pointed out that corruption among police officers was caused by several flaws in their organizational system. Because of these flaws, "even good people are tempted to manipulate things for personal gains" knowing the probability of being caught is very small. Therefore, to minimize, if not eliminate, corruption, the plan was to promote transparency throughout the PNP, from transactions in recruitment, placement and promotion to procurement of supplies through bidding. This rested on the premise that corruption was committed for two reasons: human desire and system error. To address corruption therefore, these two factors must be eliminated and this was what the PNP Anti-Corruption Plan intended to do. But as to how long the PNP could stay ahead of public expectation only the PNP could determine, according to the drafters of the plan.¹⁰⁶

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http://factsanddetails.com/southeast-asia/Philippines/sub5_6f/entry-3911.html

104

<http://www.globalsecurity.org/intell/world/philippines/npn-corruption.htm>

105

<http://www.globalsecurity.org/intell/world/philippines/npn-corruption.htm>

106

<https://www.scribd.com/presentation/120931657/ANTI-CORRUPTION-MANUAL-2007>

More than a decade later, corruption in the police force appears to have remained endemic, prompting President Rodrigo Duterte to promise rewards running to tens of thousands of dollars for information leading to the capture of police officers protecting drug syndicates and to warn corrupt officials they would face "a day of reckoning." Singling out corrupt policemen -- known as 'ninjas' -- who take pay-offs from drug lords, Duterte placed a 2 million peso (\$43,000) bounty on their heads and urged officers of all ranks: "Sneak on your friends."¹⁰⁷

4.4 General Human Rights Principles

PNP

The obligation to respect, protect and uphold human rights and ensure dignity for all is included in a number of policy documents applicable to members of the PNP. The first rule for the functions of a police officer as set out in the PNP Operational Procedure Manual requires that "all PNP personnel shall respect the human rights and dignity of suspect/s during police operations."¹⁰⁸ This is found in the first section of the manual, which, according to the preface, all PNP personnel are required to know by heart and to comply with. Similarly, the PNP Ethical Doctrine's Declaration of Policy robustly stipulates the protection and promotion of human rights by all PNP members. The declaration, found in Section 2 of the Ethical Doctrine Manual, states:

A truly professionalized and dedicated law enforcer shall be developed in promoting peace and order, ensuring public safety and enhancing community participation guided by the principle that a public office is a public trust and that all public servants must, at all times, be accountable to the people. They shall serve with utmost responsibility, integrity, morality, loyalty and efficiency with due respect to human rights and dignity as the hallmark of a democratic society. They shall, at all times, support and uphold the Constitution, bear faithful allegiance to the Constitution, bear faithful allegiance to the legitimate government, respect the duly constituted authority and be loyal to the police service.

Section 2.9 further elaborates on the human rights obligations of PNP officers:

In the performance of duty, PNP members shall respect and protect human dignity and uphold the human rights of all persons. No member shall inflict, instigate or tolerate extra-judicial killings, arbitrary arrests, any act of torture or other cruel, inhuman or degrading treatment or punishment, and shall not invoke superior orders or exceptional circumstances such as a state-of-war, a threat to national security, internal political instability or any public emergency as a justification for committing such human rights violations.

The PNP Ethical Standards, as set out in Chapter III of the Ethical Doctrine Manual, also affirm the human rights obligations of PNP officers: "PNP members shall strive constantly to respect

107 <http://www.reuters.com/article/us-philippines-duterte-idUSKCN1140KM>

108 Rule 1.2, PNP Operational Procedure Manual.

the rights of others so that they can fulfil their duties and exercise their rights as human beings, parents, children, citizens, workers, leaders, or in other capacities and to see to it that others do likewise.”¹⁰⁹ As mentioned above, the Ethical Doctrine Manual also incorporates the UN Code of Conduct for Law Enforcement Officials in its entirety, of which Article 2 provides that “all law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”

In 2009, the PNP adopted a human rights-based policing approach. The PNP Guidebook on Human Rights Based Policing provides a comprehensive and detailed outline for what this approach entails for members of the PNP in the fulfilment of their duties. It includes a detailed overview of human rights that are relevant to policing and explains why PNP members have a responsibility to promote and protect human rights, as well as giving a thorough explanation of what the human rights-based policing policy means for members of the PNP in their daily work as police officers. The guidebook is an impressive and progressive document. However, regrettably, it states in its opening pages that “previously issued PNP policies, guidelines, and established operational procedures take precedence over the contents of this material.”¹¹⁰

It is significant that these various manuals and guidelines adopted to regulate the functioning and practices of the PNP include such robust provisions calling for the respect, protection and promotion of human rights standards by PNP officials. They indicate, at least on paper, a strong commitment by the PNP to adhere to the human rights obligations applicable to the Philippines by virtue of the international conventions and treaties to which it is a state party.

Barangay Tanod Brigades

The above-mentioned guidelines and manuals for PNP officers are not applicable to barangay tanod brigades, even though their policing functions are so similar. In an effort to professionalize the barangay tanod, in 2003 the DILG issued a guideline under Memorandum Circular 43 of that year, which formally sets out its composition, the qualifications of its members, their duties and responsibilities, the equipment they may use during their operations, and their scope of operations and benefits. The same guidelines also provide for the capacity development program for the tanods to be managed by the Philippine Public Safety and College in coordination with local government academy and field units of the DILG. The prescribed courses include a basic orientation course and a skills training course, which are intended to prepare the tanods to perform their peace and order functions in the community. Topics on human rights are not explicitly cited as part of the training curriculum.

Following the adoption of Memorandum Circular No. 94-194 of 27 October 1994, all barangays in the Philippines were called on to establish a Barangay Human Rights Action Centre. The establishment and functioning of the BHRACs is mandated through a series of memoranda of understanding agreed between the DILG, Commission on Human Rights and the League of Municipalities of the Philippines, which is the organisation of barangay chairpersons.

Each BHRAC is coordinated by a Barangay Human Rights Action Officer (BHRAO) which is an elected position. BHRACs are mandated to adopt a Human Rights Action Plan aimed at improving the human rights situation within the barangay. BHRACs have a varied role, which includes receiving complaints regarding human rights violations, as discussed in more detail below, as well as organising human rights information and education drives on a continuing

basis for barangay officials, officers and employees, including the barangay tanod brigades. The training is to be provided jointly by the DILG and the Commission on Human Rights.¹¹¹ While the fact that barangay tanods receive training in human rights standards is positive, these trainings do not focus on how to ensure respect for human rights in the policing function carried out by the barangay tanods.

Non-Discrimination

While the Philippines Constitution does not include a blanket prohibition of all discrimination on any grounds, a 1979 presidential decree makes all violations of the UN Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Elimination of Discrimination against Women criminal offenses. Discrimination on other grounds, such as political opinion, sexual orientation, language, or religious belief is not prohibited by law.

4.5 Oversight of the Police

Oversight of the agencies providing law enforcement services in the Philippines is highly complex. This section will focus on the oversight mechanisms in place for the Philippines National Police and the barangay tanods. This oversight function is fulfilled by a large number of internal and external officials and bodies, which results in some confusion and lack of clarity regarding roles and mandates for oversight, ultimately undermining the strength of the protection provided by these oversight bodies and mechanisms. The complexity of the oversight structure also raises questions as to the degree to which the PNP and barangay tanods are subjected to continuous and effective report and review procedures. This section will provide an overview of the role played by the various oversight mechanisms designed to address cases of law enforcement misconduct.

In terms of internal oversight mechanisms within the PNP structure, the Director General of the PNP, Police Regional Directors, Police Provincial Directors, the Chief of Police, the Directorate for Investigation and Detective Management, the Directorate for Intelligence and the Internal Affairs Service are all responsible for overseeing various aspects of the functioning of PNP officials and responding to instances of police misconduct. Specifically, these are the following:

4.5.1 Director General of the PNP

The Director General may impose the following administrative punishments as long as they do not exceed 180 days: dismissal from service; forfeiture of salary; suspension; and any combination thereof. The Director General is also empowered to place police personnel under restrictive custody during the pendency of a grave administrative case filed against him or her, or after the filing of a grave criminal complaint against him or her.¹¹²

¹¹¹ <http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/bhrac/bhrac%20revised.pdf>

¹¹² Asian Development Bank, Background Note on the Justice Sector of the Philippines, 2009.

¹⁰⁹ PNP Ethical Doctrine Manual, Chapter III, 3.4.

¹¹⁰ PNP Guidebook on Human Rights Based Policing, ‘User’s Note.’

4.5.2 Police Regional Directors

The Police Regional Director may impose the disciplinary punishment of dismissal from the service on any member of the PNP. The Director may also impose any of the following administrative punishments, provided that the period does not exceed 60 days: admonition or reprimand; restrictive custody; withholding of privileges; forfeiture of salary; suspension; demotion; any combination thereof.¹¹³

4.5.3 Police Provincial Directors

The Police Provincial Director may impose the following administrative punishments, provided that they do not exceed 30 days: admonition or reprimand; restrictive custody; withholding of privileges; forfeiture of salary; suspension; demotion; any combination thereof.¹¹⁴

4.5.4 Chief of Police

The Chief of Police may impose any of the following administrative punishments for up to 15 days: admonition or reprimand; restrictive custody; withholding of privileges; forfeiture of salary; suspension; demotion; any combination thereof.¹¹⁵

4.5.5 Directorate for Investigation and Detective Management

The Directorate for Investigation and Detective Management may undertake pre-charge investigations on administrative cases filed against police officers.¹¹⁶

4.5.6 Directorate for Intelligence

The Directorate for Intelligence is mandated to conduct intelligence on PNP personnel considered to be erring.¹¹⁷

4.5.7 Internal Affairs Service

The Internal Affairs Service is the internal disciplinary mechanism for the PNP. It is responsible for investigating complaints of police misconduct, filing criminal cases as appropriate and assisting in the prosecution of these cases, and assisting the Office of the Ombudsman in cases involving PNP personnel.¹¹⁸

113 Ibid.
114 Ibid.
115 Ibid.
116 Ibid.
117 Ibid.
118 Ibid.

4.5.8 Philippines National Police Commission

The Philippines National Police Commission is established under Act No. 6975, which also establishes the PNP (as amended by Act No. 8551), and provides oversight on the administrative functioning of the PNP. According to these pieces of legislation, the powers of the commission include:

- Exercising administrative control over the PNP;
- Advising the president on all matters involving police functions and administration;
- Developing rules, regulations, standards and procedures for the function of the police with a particular view to efficient organisation, administration and operation; and preparing the police manual regarding these issues;
- Approving or modifying training programs for the police; and
- Affirming, reversing or modifying, through the National Appellate Board, personnel disciplinary actions involving dismissal from the service imposed upon members of the PNP by the Chief of the PNP.

The commission is mandated to “investigate police anomalies and irregularities ... and summarily dismiss erring officers.” It is also responsible for conducting pre-charge investigations into complaints and cases filed against police officers. In addition, it plays an oversight role in disciplining officers who have failed to meet the administrative requirements of their position, for example, a PNP officer who failed to submit a report following the discharge of a firearm.

Those whose rights have been violated by the police can submit complaints to a range of institutions. Section 52 of Act No. 8551 provides that “any complaint by an individual person against any member of the PNP shall be brought before the following:

1. Chiefs of police, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period not exceeding 15 days;
2. Mayors of cities and municipalities, where the offense is punishable by withholding of privileges, restriction to specified limits, or forfeiture of salary, or any combination thereof, for a period of not less than 16 days but not exceeding 30 days;
3. People’s Law Enforcement Board, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period exceeding 30 days; or by dismissal.”

The above-mentioned oversight mechanisms are applicable only to officers of the PNP, and their oversight does not extend to members of barangay tanod brigades. However, there are numerous external bodies responsible for providing oversight to both the PNP and barangay tanod brigades. These include People’s Law Enforcement Boards, the Office of the Ombudsman, the Commission on Human Rights and the National Prosecutor’s Office. This section will elaborate on the oversight role played by these bodies, and analyse their compliance with international human rights standards for ensuring oversight and accountability of the police.

Victims of abuses by the police can also submit complaints to the Commission for Human Rights (CHR), the Office of the Ombudsman, and directly to the National Prosecutors Office, as described in further detail below.

4.5.9 People's Law Enforcement Boards

Under Act No. 6975, Section 43, People's Law Enforcement Boards (PLEBs) are to be established in every city and municipality, and in some cases more than one per municipality or city with a minimum of 1 PLEB per every 500 city or municipal police officer. PLEBs are made up of one member of the local legislative branch of city government (sangguniang panlungsod), a punong barangay, and three respected members of the community chosen by the barangay's peace and order council, one of whom must be a member of the Bar Association or a college graduate or the principal of the central elementary school in the locality. The PLEB's role is to "hear and decide citizens' complaints or cases filed before it against erring officers and members of the PNP." The PLEBs form part of the disciplinary mechanisms of the PNP structure, and their decisions are final and executory. PLEBs are not, however, judicial bodies, and therefore cannot deal with criminal matters. Rather, they can make decisions to dismiss erring officers or impose other disciplinary sanctions. The PLEBs do not appear to have jurisdiction to receive and decide on complaints against barangay tanod officers, which is problematic in light of the policing function played by such officers. The structure and makeup of the PLEBs also raises some questions as to their independence, given that they include barangay captains and members selected by the peace and order council, which may collude to select members who will not challenge the views of the barangay captains.

4.5.10 City and Municipal Mayors

Similar to PLEBs, city and municipal mayors can receive complaints against erring police officers and barangay tanods, but they are not mandated to address criminal complaints and are limited to recommending disciplinary actions against erring officers.

4.5.11 Office of the Ombudsman

The Office of the Ombudsman is an independent, constitutional body established under Act No. 6770 to receive and act on complaints filed in any form or manner against government officers or employees. Priority is given to cases against high-ranking government officials, as well as complaints involving grave offenses. In practice, with regard to the police, the Office of the Ombudsman generally investigates and acts on corruption complaints against police officers.

4.5.12 National Commission on Human Rights

The Philippines National Commission on Human Rights (NCHR), the national human rights institution of the state, is an independent, constitutional body established under the 1987 Constitution. Its role is multifaceted, but it primarily investigates violations of human rights, both on an ex-officio basis and in response to complaints submitted to it. Furthermore, the NHRC is

also mandated to monitor the human rights compliance of the PNP.¹¹⁹ This it can investigate either on the basis of complaints received or ex-officio. However, it lacks the authority to subpoena witnesses and compel the production of evidence, which can pose a serious limitation on the investigation process. Furthermore, the NHRC is an investigatory and not an adjudicatory body, and it therefore only has the power to forward a case on to the prosecutor's office, which is the one to decide whether or not to prosecute. While the NHRC does provide some oversight function for police activity, it does so only in response to complaints received, and furthermore is reliant on the National Prosecution Service to ensure that police officers are held accountable for human rights violations.

4.5.13 Challenges

While in theory the large number of oversight bodies and mechanisms in place to monitor the functioning of law enforcement officers is a positive thing, in practice it creates some confusion as to which body is actually responsible for holding police officers accountable for misconduct or more serious violations of human rights, as each mechanism has its own set of procedures and requirements.¹²⁰ This is compounded by the fact that the hierarchical structures that exist over the PNP do not apply to the barangay tanod brigades. According to Act No. 6975, the National Police Commission is responsible for monitoring PNP performance, but PNP officers are under the "operational supervision and control" of city and municipal mayors. Moreover, the PNP and NAPOLCOM both sit institutionally under the Department of Interior and Local Government, further complicating the roles of NAPOLCOM, DILG and local government units with regard to oversight of the PNP.

The complexity of the oversight mechanisms and their duplicate functions combine to undermine their effectiveness. The multitude of agencies and officials that have overlapping responsibilities contributes to confusion over which agency is responsible when an incident arises. Furthermore, for those whose rights have been violated by police officers, determining which agency to file their complaint with is equally confusing and complicated, which can be detrimental to their willingness to seek redress and reparation for the harm suffered. Consequently, despite the vast oversight apparatus in place, oversight of the PNP is dysfunctional.

4.6 Use of Force and Firearms

4.6.1 Rules Governing the Use of Force

The use of force by law enforcement officials is regulated under a number of instruments. The PNP Operational Procedure Manual outlines the circumstances for the lawful use of force by PNP officers. This is not applicable to barangay tanods, and it is not clear whether there are any similar such regulations for the use of force by these local law enforcement officers. The lack of clear regulations on the permissible use of force by barangay tanods is extremely concerning considering the police-like functions they carry out at the community level, as well as the fact that they are equipped with weapons including night sticks and tear gas.

119 PNP Operational Procedure Manual, Message from Chairperson of the Human Rights Commission, p. vi.
120 ADB, Background Note on the Philippines.

Tanods are not allowed to use firearms. As civilians who volunteer to contribute in the community with peacekeeping and law enforcement, they are allowed to engage only in unarmed civilian assistance, including: intelligence gathering; neighbourhood watch patrols or rondas; assistance during emergencies or disasters; assistance in the identification and implementation of community development projects; and gathering relevant information and data as inputs to peace, order planning and research.

Those who may be authorized to possess and carry firearms are the barangay chairpersons, at least within their territorial jurisdiction and subject to the regulations in Section 389 of the Local Government Code and other relevant weapons control policies. In 2008, NAPOLCOM issued Memorandum Circular 013, which laid down procedures for how the tanods would deputize as members of Police Auxiliary Units. This would have empowered them to serve as “force multipliers” with police powers in the community, including authorization to possess and carry firearms subject to existing rules and regulations. However, the memorandum, for some reason, was not carried out and the arming of the tanods never materialized.¹²¹

There are a number of rules included in the Operational Procedure Manual regulating the use of force by police officers, as well as setting out the steps that must be taken in order to prevent the use of force in all circumstances. Rule 6.2 calls on officers to use “peaceful means, including the use of megaphones or any other similar instruments to warn or influence the offender/s or suspect/s to stop and/or peacefully give up.”¹²² In this way, the PNP Operational Procedures Manual does emphasize the need for non-violent means to be used as far as possible, and it explicitly stipulates the use of non-violent means and use of force only when strictly necessary, as is set out in the international standards, in the rules pertaining to house evictions and demolitions, and to labour disputes (Rules 19 and 21).

The use of excessive force by police officers is prohibited under Rule 7.1 of the Operational Procedure Manual, which stipulates that a police officer may lawfully use force “in the lawful performance of his duty ... to accomplish his mandated task of enforcing the law and maintaining peace and order.” Furthermore, Rule 2.4 requires all police officers to carry a non-lethal weapon, such as pepper spray, a baton or a stun gun, “which shall be primarily used in a non-armed conflict with an uncooperative and unruly offender during the arrest.”¹²³ These rules make clear that use of force by police officers should be a measure of last resort during confrontations between civilians and police officers, in line with international standards.

The PNP Operational Procedure Manual also requires that officers issue a verbal warning before using force against an offender. Officers are exempt from the requirement to issue a verbal warning where there is imminent threat to life or property, and “there is no other option but to use force to subdue the offender.”¹²⁴ The Operational Procedure Manual also requires that any

use of force against an armed offender must be “necessary and reasonable.”¹²⁵ The manual sets out the “factors to consider in the reasonableness of the force employed” as follows: “A police officer, however, is not required to afford offender/s attacking him the opportunity for a fair or equal struggle. The reasonableness of the force employed will depend upon the number of aggressors, nature and characteristic of the weapon used, physical condition, size and other circumstances to include the place and occasion of the assault. The police officer is given the sound discretion to consider these factors in employing reasonable force.”¹²⁶ The manual further stipulates that the police officer in charge of any operation which results in the use of force is responsible for exercising control over all police personnel involved in the operation, “and shall exhaust all possible means to apply the necessary and reasonable force to protect lives and properties during armed confrontation.”¹²⁷ In this way, the regulations on the use of force imply that restraint must be exercised in the use of force, though this is not explicitly stated. The rules included in the Operational Procedure Manual regarding the use of force by PNP officers are in line with the international human rights standards applicable to the Philippines.

The PNP Guidebook on Human Rights Based Policing also provides an extensive outline of the steps that must be taken by police officers in order to ensure that all use of force is in line with international human rights standards. Standard 3 of the guidebook states that force may only be used when strictly necessary and “to the minimum extent required under the circumstances.”¹²⁸ The guidebook includes a number of suggested actions that should be undertaken to ensure that police officers are equipped with the skills and knowledge necessary to avoid the use of force wherever possible. These include:

- Reorienting police personnel about the use of force doctrine or use of force continuum, with emphasis on the use of lethal force only as a last resort;
- Retraining police personnel in proper arrest procedures with emphasis on non-lethal tactics, weapons retention techniques, and officer safety measures; and
- Reorienting police personnel assigned to crowd control units towards human rights, crowd psychology, maximum tolerance and use of calibrated force, especially during the dispersal phase of Civil Disturbance Management (CDM) operations.

While there are extensive regulations in place regarding the use of force by PNP officers, these do not include an explicit reference that there are no exceptions to the unlawful use of force, an important protection to prevent any misunderstandings regarding the lawfulness of the use of force. It is also not clear from the information available whether PNP officers receive training in non-violent means, as a means of preventing, wherever possible, the use of force.

The use of force regulations as outlined in the Operational Procedures Manual do not include any regulations stipulating that when the use of force is unavoidable, law enforcement must minimize damage and injury, and respect and preserve human life. Nor do they stipulate that assistance and medical aid must be rendered to any injured or affected person at the earliest

125	Rule 7.5, PNP Operational Procedure Manual: “During confrontation with an armed offender, only such necessary and reasonable force should be applied as would be sufficient to overcome the resistance put up by the offender; subdue the clear and imminent danger posed by him; or to justify the force/act under the principles of self-defense, defense of relative, or defense of stranger.”
126	Rule 7.6, PNP Operational Procedure Manual.
127	Rule 7.7, PNP Operational Procedure Manual.
128	PNP Guidebook on Human Rights Based Policing, Standard 3.

121 Letter of DILG Secretary Jesse Robredo, DILG Opinion No. 31 Series of 2011, June 28, 2011

122 Rule 6.2, PNP Operational Procedure Manual: “During actual police intervention operations, the Team Leader shall use peaceful means including the use of megaphones or any other similar instruments to warn or influence the offender/s or suspect/s to stop and/or peacefully give up.”

123 Rule 2.4, PNP Operational Procedure Manual: “Every police officer shall carry in his prescribed rig a non-lethal weapon (pepper spray, baton or stun gun), which shall be primarily used in a non-armed confrontation with an uncooperative and unruly offender during the arrest.”

124 Rule 7.2 and 7.2, PNP Operational Procedure Manual.

possible moment, or that relatives or close friends of the injured or affected persons should be notified at the earliest possible moment. However, these regulations are included in the UN Code of Conduct for Law Enforcement Personnel, which is applicable to PNP officers through the Ethical Doctrine Manual under Chapter VI, Section 4. Regrettably, as mentioned above, this section of the manual only makes mention of the Code of Conduct and does not include the code in its entirety.

The regulations applicable to PNP officers through the Operational Procedures Manual and the Human Rights Policing Guidebook are largely in compliance with the international standards, with some small omissions. Furthermore, the inclusion of the UN Code of Conduct in the Ethical Doctrine Manual is significant, and bridges any gaps that may exist between the international standards and those set out in the domestic manuals and guidelines. However, one major gap appears to be the absence of any domestic legislation criminalizing the arbitrary or excessive use of force by law enforcement officials. Article 235 of the Penal Code criminalises the maltreatment of prisoners or persons in detention, but the penal code does not include any provisions to criminalise arbitrary and abusive force by law enforcement.

4.6.2 Rules Governing the Use of Firearms

As barangay tanods are not issued firearms, this section focuses on the rules that regulate use of firearms by members of the PNP. The PNP Operational Procedures Manual includes a section in this regard. PNP officers are issued a service weapon upon entry into service following graduation from the National Police Academy. The regulations do not prohibit the carrying of personal firearms, nor do they specify the type of firearm and ammunition permitted, and there is no mention of control and storage of firearms.

Under Rule 8.1 of the PNP Operational Procedure Manual, the use of firearms by PNP officers is justified only if an offender poses “imminent danger of causing death or injury to the police officer or other persons” or in self-defence, defence of a relative, and defence of a stranger if there is a real threat to their life, and “the peril sought to be avoided must be actual, imminent and real.” This regulation also stipulates that “unlawful aggression should be present for self-defence to be considered as a justifying circumstance.”

As mentioned above, PNP officers are required to issue a verbal warning before any use of force, unless there is an imminent threat to life or property that prevents such a warning, which is in line with international standards. However, warning shots are not permitted when using firearms. Rule 6.3 of the operational manual prohibits the use of warning shots during police intervention procedures.¹²⁹ The regulations and guidelines available for PNP officers do not, however, stipulate that adequate time must be given for a warning to be obeyed (as long as this would not result in death or serious injury to the officer or others, or it is clearly pointless and inappropriate to do so.)

None of the regulations or guidelines regarding the conduct of PNP officers explicitly includes the requirement to render medical aid to any persons injured as a result of the use of force or firearms. Neither do they require officers to notify relatives or friends of the injured person at the earliest possible moment, as required under international regulations. However, these are requirements under the UN Code of Conduct for Law Enforcement Officials, which is applicable

129 PNP Operational Procedure Manual, Rule 6.3: “The police shall not use warning shots during police intervention operations.”

to the Philippines National Police as it has been included in the Ethical Doctrine Manual under Chapter VI, Section 4. Regrettably, as mentioned above, this section of the manual only makes mention of the Code of Conduct and does not include the code in its entirety.

Rule 8.4 of the PNP Operational Procedure Manual requires all police officers who fire their service weapon during a confrontation with an offender(s) to submit an incident report outlining the circumstances necessitating the use of the firearm. Similarly, Rule 11 requires that following an armed confrontation, the police unit of the jurisdiction where the confrontation occurred must “immediately undertake the necessary investigation and processing of the scene of the encounter.”¹³⁰ The PNP Human Rights Guidebook similarly calls on police personnel involved in discharge of firearms to submit an after-operations report, and requires that an assessment be conducted to “determine the validity of the use of force during a police operation.”¹³¹ The Human Rights Guidebook also calls for the “assistance of the PNP Health Service, Department of Health (DOH), or a psychiatrist in the conduct of periodic neuro-psychiatric examinations, stress management, and counselling services for personnel involved in shootouts or discharge of firearms.”

While there is an obligation for PNP officers to submit a report regarding the use of firearms in the course of their police duty, the regulations and guidelines give no further guidance on the review of these reports by superior officials, or on the procedure to be followed if a superior official finds the use of the firearm to be unjustified. This omission is not in line with the international standard, which calls for review of all incidents of use of firearms by superior officials, and for accountability where the use of firearms is determined to be unjustified. The failure to submit a report following the use of firearms, as required by the standing regulations, is considered a “simple neglect of duty”, which is a “light offense” punishable by withholding of privileges, restriction to specified limits, restrictive custody, suspension or forfeiture of salary, or any combination thereof for a period of 1 to 30 days.¹³²

4.7 Dispersal of Assemblies

The PNP’s role in dispersal of lawful public assemblies is regulated under Rule 25 of the operational procedures handbook, which sets out in extensive detail the conditions under which public assemblies may be held, as well as the role of the police in providing assistance to lawful public assemblies on the one hand, and in dispersing public assemblies which are unauthorized or unlawful on the other hand. Rule 25 stipulates the following principles to be adhered to when police are dealing with public assemblies:

- Public assemblies held in public places require a permit from the mayor or city where they are held;
- Public assemblies that are peaceful and include no incidence of violence will not be dispersed;

130 PNP Operational Procedure Manual, Rule 11.

131 PNP Guidebook on Human Rights Based Policing, Standard 3(e).

132 Memorandum Circular No. 2007-009, “Uniform Rules of Procedure Before the Administrative Disciplinary Authorities and the Internal Affairs Service of the Philippine National Police.

- Police will provide assistance to peaceful public assemblies only as far as this is requested by organisers;
- Public assemblies that violate the terms of the permit may be peacefully dispersed; however, this will only be done after notifying the organisers;
- Demonstrations and rallies in areas where public assemblies are prohibited will be peacefully dispersed, and those refusing to do so will be brought into police custody; and
- Maximum tolerance must be exercised in the conduct of dispersal operations.

Rule 25 also stipulates the limitations of the PNP with regard to dispersal of public assemblies, stating that PNP officers may not interfere with the holding of a public assembly. It also provides clear guidelines for the Civil Disturbance Management (CDM) contingent during rallies and demonstrations, which include the following:

- CDM contingent are to wear uniforms but not carry firearms;
- Anti-riot devices used by the CDM contingent are limited to: tear gas, smoke grenades and water cannons, and may only be used when public assemblies include actual violence, serious threats of violence or destruction of public property;
- Public assemblies with a permit can only be dispersed if they become violent, and in the following manner:
 - At the first sign of violence, the CDM contingent ground commander must bring this to the attention of the assembly leader and ask him/her to prevent further violence;
 - If violence reaches a point where rocks or other items are being thrown at PNP officers or other non-assembly participants, an audible warning must be given by the CDM contingent ground commander that the assembly will be dispersed if violence persists;
 - If the violence or disturbance does not stop, the ground commander of the CDM contingent must give a second audible warning and after a reasonable time, shall immediately order the dispersal of the assembly; and
 - Assembly leaders or organizers will only be arrested if they violate the law.
- In the event of a public assembly without a permit:
 - If leaders or organisers can show that an application for the assembly was filed at the appropriate office at least five days prior to the assembly and no action was taken, it is the burden of the authorities to show that the assembly application was denied, in which case it can be peacefully dispersed "following the procedure of maximum tolerance prescribed by law."

The PNP rules prohibit the following during peaceful public assemblies:

- Acts impeding in any way the right to peaceful assembly;
- Unnecessary firing of firearms to disperse public assemblies; and
- The following acts committed within 100 metres of a public assembly:
 - Carrying a deadly weapon or device including a firearm, bomb or bladed weapon;
 - Malicious burning of objects in the street;
 - Carrying of firearms by CDM contingent;
 - Using a motor vehicle to disturb or impede a public assembly; and
 - Drinking alcoholic beverages and gambling.

If public assemblies become violent, Rule 25 requires the PNP to use non-lethal weapons and equipment to suppress violence, protect lives and prevent damage to public property. Such non-lethal weapons include shields and truncheons, water cannons and tear gas. Shields and truncheons may only be used to push back demonstrators and not to strike individuals, and they must be used with "caution and due diligence to avoid unnecessary injury." Water cannons are to be used only when CDM contingents have not been able to disperse an assembly with shield and truncheon and have been pushed back into secondary positions; tear gas may only be used to break up groups of demonstrators who continue to be aggressive.

Finally, Rule 25 also requires that PNP officers respect human rights and equal treatment and protection of everybody, and that they observe maximum tolerance.

Article 131 of the Penal Code also regulates the way in which public assemblies are handled, imposing a prison sentence on any public officer or employee who "without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same." It similarly criminalises the preventing of any person from attending a lawful public gathering.

The Philippines law and guidelines which regulate the role of the police in managing and dispersing public assemblies is very comprehensive and, overall, is very protective of the public. It is also important to note that PNP officers are bound by the UN Code of Conduct for Law Enforcement Officials, which also requires respect for and protection of human rights in dispersing public assemblies. However, while Rule 25 is extremely thorough, it does not explicitly prohibit excessive use of force in the dispersal of public assemblies, and also fails to include a mechanism for reporting on dispersal of public assemblies after the fact. Despite the strong protections provided by Rule 25 with regard to respect for human rights, there are reports that in recent months, and notably since the election of President Duterte, that in practice these protections are not always adhered to, and police have used unnecessary and excessive force to break up public assemblies, including the use of tear gas without just cause, resulting in

injuries of assembly participants.¹³³ The use of such violence to break up peaceful protests is reminiscent of the violent clashes between protesters and police seen during the era of the Marcos dictatorship in the Philippines. There is therefore legitimate concern that the strong protections provided by Rule 25 are not always respected in practice.

4.8 Conclusion

The legislation and policies in place in the Philippines to ensure the respect and protection of human rights by the Philippines National Police are highly comprehensive and thorough, and include the international human rights standards in total, not least through the direct application of the UN Code of Conduct for Law Enforcement Officials. The legally binding nature of the PNP Operational Procedures Manual and the high level of detail are commendable. However, there are concerns that these standards are not always respected in practice—concerns which are heightened in light of the recent change in government of the Philippines which has seen a rise in the number of incidents of police using excessive force and acting unlawfully to violate the rights of citizens with impunity. These concerns are heightened by the fact that the police oversight structure is highly complex, involving a broad range of bodies playing various roles in ensuring accountability for violations by police officers. This creates confusion and the overall result is an undermining of the robustness of the police oversight structures in the Philippines.

Another issue that is of significant concern is the lack of a similarly comprehensive policy and legal framework requiring respect for and protection of human rights by barangay tanods, particularly as those living in barangays are among the most vulnerable to violence by authorities and have the least access to justice. There are also serious concerns regarding the oversight structures in place for barangay tanods, which often lack the independence and impartiality necessary given that barangay tanods are appointed to their position by barangay leaders, who are in many cases family members.

The legal and policy framework protecting human rights in the Philippines can therefore be described as extremely robust on paper, but in practice it suffers from significant shortcomings which serve to undermine the overall respect for and protection of human rights by members of the PNP as well as by barangay tanods.

This was highlighted when President Duterte embarked on a campaign to eradicate ‘drug personalities’ and ‘cleanse’ the country of criminality alongside the so-called drug menace. Since he took office on June 30 2016, more than 5,000 people were reported to have been killed in police operations and vigilante-style killings by unknown assailants. Many of the fatalities are believed to be victims of extrajudicial killings by police officers, some of whom are suspected to be involved in the drug trade themselves.

One of the most controversial cases was the killing of Rolando Espinosa – a suspected druglord and the mayor of Albuera municipality in Leyte province – in November 2016, while he was in protective custody after promising to share information about the drug trade that would implicate certain police personalities. PNP Director-General Ronald dela Rosa relieved Superintendent Marvin Marcos as Director of the Criminal Investigation and Detection Group

(CIDG) in Region 8 (Eastern Visayas) after Marcos was named by Espinosa for involvement in the drug trade. A few days later, CIDG operatives led by Marcos forced their way into the jail at dawn, disarmed the guards and shot Espinosa dead. The story they gave out was that he had tried to shoot at them when they arrived to serve a search warrant on him as they suspected he had a gun and “shabu” (methamphetamine hydrochloride) inside his cell.

Senator Panfilo Lacson, chair of the Senate committee on Public Order and Dangerous Drugs and a former chief of the PNP, described Espinosa’s death as a “clear case of extrajudicial killing”) and cited it in a call for the resumption of a Senate probe into drug-related deaths which had closed in October. Chief Dela Rosa later told the Senate inquiry that “someone higher” had ordered him to reinstate Marcos, prompting the PNP Internal Affairs Service to temporarily lift the restrictive custody order against Marcos and others involved in Espinosa’s killing. Not long after, President Duterte admitted that it was he who ordered Dela Rosa to reinstate Marcos.

The National Bureau of Investigation (NBI) released the results of its probe in December 2016 with the conclusion that the police officers murdered Espinosa. However, President Duterte then came out with a public statement saying he was more inclined to believe the police, whom he had ordered to kill drug suspects who resisted arrest. “Whatever the police say, that’s the truth for me. The NBI said it was murder. The police said, ‘Sir, he fought back.’ I believe the police. Why would I sacrifice the police for that?” the president said, continuing “I will not allow these guys to go to prison, even if the NBI says it was murder. After all, the NBI is under me, the Department of Justice is under me.”¹³⁴

Antonio Trillanes, a member of the Senate’s Justice and Human Rights (JHR) committee, said the President’s statement indicated that he masterminded the killing of Espinosa. “Based on the investigation of the NBI, the incident was a rubout but the President is trying to save them (Marcos and his group) and he is making his own story, so in effect he is obstructing the administration of justice,” he said.¹³⁵ For Senator Leila de Lima, also a JHRC member, the statement was “bordering on impeachability”: “It’s a betrayal of public trust because it’s his duty to enforce the law. And part of his duty to enforce the law is making sure that those who are responsible for committing crimes are being made accountable,” said De Lima.¹³⁶

The JHRC’s abovementioned report into alleged extrajudicial killings had concluded in October that drug-related killings in the country were not state-sanctioned. However, it acknowledged the unusual number of deaths in police operations and the rise in vigilante-style executions of alleged drug personalities. It established that 4,248 people had been killed from July to early October, an average of 47 per day. If that rate had held, it would have meant an average of 8496 extrajudicial killings during the second half of 2016, and the first 6 months of President Duterte’s presidency.

Comparing this to the Arroyo administration, where an average of 10,196 killings were recorded every year, and that of Benigno Aquino III, when the average was 14,313, JHR Committee Chairperson Sen. Dick Gordon said the number of killings during Duterte’s time would be a slight departure. But more than comparing figures among the different administrations, the committee noted that the drug menace and the killings associated with it, as well as the

¹³⁴ <http://www.manilatimes.net/duterte-backs-pnp-espinoza-killing/300625/>

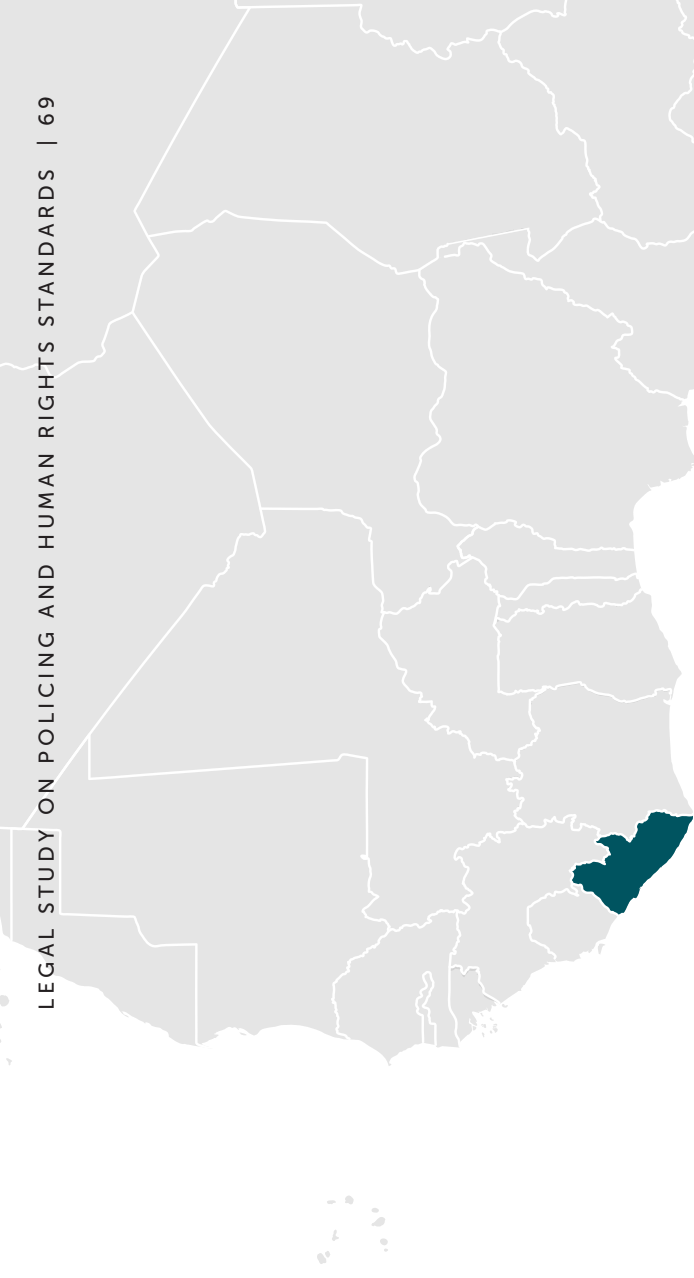
¹³⁵ Manila Times, “Duterte backs PNP,” 8 December 2016. Retrieved from: <https://www.pressreader.com/philippines/manila-times/20161208/281552290484820>.

¹³⁶ Ibid.

unabated killings going on through the years, had not been resolved at all. It recommended, however, that the law enforcers involved in the PNP's Oplan Tokhang (Operation Knock and Plead) campaign against drugs be admonished for violating the constitutional rights of a number of suspected drug personalities.

"The police must be held accountable. Check and balance mechanisms must be further strengthened to ensure that public order and safety is promoted.... If we can stop killings regardless of the terminology we use to refer to them, whether extrajudicial or not, then our people will restore their faith in the police and the government," the 120-page committee report reads. It continues: "Many killings with impunity through the years up to the present have not been resolved by the police, leaving our people feeling unprotected, insecure, fearful and cynical about the ability of the police to protect and serve them. Coupled with the helpless indifference of the people, the only thing that remains constant is that the police and the criminal justice system have failed us. All these have led to many killings with impunity and some people, including some police officers, probably think they can get away with murder."

Contributing to the attitude of these police officers is the way the President acts and talks with regard to the war against illegal drugs. In its recommendations, the Senate panel said the police and other law enforcement officers "must be admonished" for compelling drug users to sign "voluntary surrender certificates" under the Oplan Tokhang. The report also proposed an amendment to the PNP Reform and Reorganization Act to enable the Internal Affairs Service to act swiftly on investigations of police personnel. It also proposed the creation of special criminal courts for erring and abusive police officers, and the creation of a joint congressional oversight committee to monitor killings and paramilitary units. These interventions are necessary if we are to protect the otherwise impressive gains made by the Philippine human rights community.



Liberia

5. Liberia: Legal and Policy Framework

5.1 Overview of Policing System

In order to understand the challenges facing Liberian policing today, it is important to have an overview of the recent historical events which led to the current situation. Following the signing of the Comprehensive Peace Agreement (CPA) in August 2003 which ended 14 years of civil war in Liberia, the United Nations Security Council adopted resolution 1509 establishing the UN Mission in Liberia (UNMIL). At this stage the mission's mandates included supporting the implementation of the CPA and the peace process; protecting United Nations staff, facilities and civilians; supporting humanitarian and human rights activities; and assisting with national security reform, including national police training and formation of a new, restructured military.

Over the past 12 years UNMIL's mandate has been renegotiated. On June 30 2016 the mandate changed from an operational mandate to an advisory one. This meant that the UNMIL personnel were scaled down considerably and the role of the mission was significantly reduced. In interviews carried out by DIGNITY prior to the scaling down, civil society organisation (CSO) representatives, police, and UN staff all expressed anxiety about the impact of the drawdown, saying they felt that Liberia was not yet ready for it. As a member of the Liberian National Police (LNP) Professional Standard Division told DIGNITY, "if things are this bad now, imagine how they'll be when UNMIL leaves."¹³⁷ Although people agreed that the UNMIL would have to leave at some point, the general perception was that the Liberian security sector was not yet strong enough to maintain law and order and provide security for the Liberian people.

The long reform process of the Liberian security sector is still ongoing. The Liberian National Police (LNP) and the Armed Forces of Liberia (AFL) were completely reformed in terms of both structure and personnel with the help of the UN, specifically UNPOL—the UN police agency—and the USA. More than 40 UN member states participated in the reform of the LNP.¹³⁸ The process began with all existing police officers being given the option to either leave the service with a small pension or to re-enroll and go through a new police training program at the police training academy (PTA). The PTA program was designed by UNMIL and different UN member states, which has led to some confusion about the most effective ways to teach, as well as the implementation of human rights.¹³⁹ One significant challenge faced by the police in Liberia is the insufficient numbers of police officers. This is particularly an issue outside of Monrovia. As of February 2013, there were only 4417 police officers in the LNP—a number that experts have said must be at least doubled to be sufficient. However, UN officials have emphasized the need to focus on improving the quality of officers rather than simply the quantity.

In 2013, the LNP and UNPOL carried out a baseline assessment of the weaknesses and strengths of the LNP and based on the findings of this assessment, adopted the 2015–2020 LNP Strategic Plan, which focuses on several key areas: Organisational Structure and System, Integrity, Financial Viability and Sustainability, Police Performance and Strategic Planning.

5.2 International Law

Liberia is a party to the majority of the international human rights treaties and conventions, including the ICCPR, signed and ratified in 2004; the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acceded to in 1976; the Convention on the Elimination of All Forms of Discrimination Against Women, acceded to in 1984, and the CAT, acceded to in 2004.

However, international treaties to which Liberia is a state party must be domesticated before they are applicable. This means that international treaties must be approved by the legislature before they can be considered part of the national legal system.¹⁴⁰ International law does not have supremacy over domestic legislation, and the Constitution is the supreme law of the land.¹⁴¹ Though a draft anti-torture bill was pending before the legislature at the time of writing (early 2017), it had not yet been adopted and therefore the CAT had not been incorporated into domestic law. Similarly, the ICCPR and the ICERD had not been domesticated into Liberian legislation.

¹³⁸ <http://unmiltonmissions.org/un-police>

¹³⁹ According to sources in the PTA and representatives from CSOs

¹⁴⁰ Hanatu Kabbah, “A Guide to the Liberian Legal System and Legal Research,” August 2014, available at: <http://www.nyulawglobal.org/globalex/Liberia1.html>.

¹⁴¹ Constitution of Liberia, Article 2.

5.3 Regional Law

Liberia is a party to the African Charter on Human and Peoples’ Rights, which it ratified in 1982. The African Commission on Human and Peoples’ Rights (ACHPR), which is mandated to oversee compliance with the African charter, has adopted treaties containing specific human and people’s rights that law enforcement officials must uphold when carrying out their duties. The African charter draws heavily on the Universal Declaration of Human Rights and other subsequent core international human rights instruments. Article 5 of the African charter provides for the right to human dignity “inherent in a human being and to the recognition of his legal status.” The article also prohibits all forms of exploitation and degradation, including torture. The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (Robben Island Guidelines), adopted by the ACHPR in 2002, expounds on the prohibition and prevention of torture in Africa, and also addresses the needs of torture victims. These guidelines draw extensively on international law, in particular the UNCAT, OPCAT and ICCPR, and provide that investigations into allegations of torture should be guided by the UN Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol). The ACHPR adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa in 2014. While these guidelines are non-binding as soft law instruments, they provide an important roadmap for steps that signatories to the African charter must take in order to comply with it, especially Article 5.

5.4 Domestic Law, Policy and Practices

From the research carried out for this report, the domestic legal and policy framework for policing in Liberia appears somewhat scarce when compared to those in place in South Africa and the Philippines. This is likely largely due to the fact that Liberia is a relatively young democracy, and is still in the process of putting in place the necessary laws and policies following decades of dictatorship and civil war. The period of extensive reforms to the security sector, is still ongoing, but so far it has included the drafting and adoption of a number of key pieces of legislation and policy related to policing. These will be outlined in this section, and elaborated on throughout the chapter.

The Liberia National Police was established through an act of the legislature in 1956, which was revised in 1975. The legal framework related to policing in Liberia was revised again with the adoption of the Liberia National Police Act of 2015 (NPA) in July 2016, replacing earlier legislation related to the Liberia National Police. Thus, the NPA is the principle piece of law outlining the structure and function of the LNP. However, it is complemented by the LNP Duty Manual, adopted in April 2008, which outlines the operational procedures for LNP officers. The 2008 LNP Duty Manual, which is binding on all LNP officers by virtue of their employment within the LNP, sets out in further detail the obligations and duties of members of the LNP in carrying out their policing role. One critique of the LNP Duty Manual, however, is the low level of detail it provides regarding the role of LNP officers in protecting and upholding human rights in their policing function. Similarly, the manual provides rather general guidance with regard to interactions with members of the public during policing activities, or arrest procedures.

One challenge faced in preparing this report was identifying and obtaining copies of the legal and policy documents relating to policing in Liberia. For example, the LNP Duty Manual makes reference to the duty of LNP officers to comply with “all rules, regulations, policies, procedures, manuals, bulletins, standing orders or any other official document issued by or at the discretion

of the Minister of Justice, or the Inspector General of Police or his/her designee”, but the authors of this report have faced significant challenges in determining whether there are any such regulations, policies, bulletins, etc., which deal specifically with the human rights obligations of LNP officers and/or which regulate the conduct of LNP officers in their interactions with members of the public. Similarly, the authors were unable to obtain copies of the LNP Use of Force Policy and the LNP Firearms and Other Weapons policies. As such, this report focuses on the content of the 2016 National Police Act, the 2008 LNP Duty Manual, and the 2015-2020 Strategic Plan to assess the level of compliance of the domestic legal and policy framework for police conduct with international human rights obligations applicable to Liberia.

5.4.1 General Human Rights Principles

Section 3 of the 2016 National Police Act sets out the basic principles which govern the work of the Liberian National Police. These principles include the need to ensure respect for human rights as well as the fundamental rights guaranteed by the Liberian Constitution and international human rights standards. The principles also call for the LNP to respect victims as well as those accused of crimes, and effective civilian oversight of the LNP. Similarly, the LNP Duty Manual includes respect for human rights as one of the core principles of the LNP, under section 1.1. It calls on LNP officers to “never lose sight of the need for legality, necessity, non-discrimination, proportionality and humanity,” and “reinforce a respect for human rights” in approaching their duties.¹⁴² Section 2.1.3, requires all members of the LNP to “ensure that the human and legal rights of all persons shall be protected at all times,” and that LNP officers must dispense of duties “without discrimination based on gender, race, religion, color, sex, creed, association or affiliation.”¹⁴³ The inclusion of explicit language on human rights principles in these documents is indicative of the overall commitment of the LNP to protecting and upholding human rights.

5.4.2 Prohibition and Prevention of Torture

As mentioned above, Liberia is party to a number of international and regional treaties prohibiting the use of torture, but these are not directly applicable at the domestic level as they have not been incorporated into domestic law by the Liberian legislature. Torture is prohibited under Article 21 of the Constitution, which states: “No person charged, arrested, restricted, detained or otherwise held in confinement shall be subject to torture or inhumane treatment.” The same article also states: “The Legislature shall make it a criminal offense and provide for appropriate penalties against any police or security officer, prosecutor, administrator or any other public or security officer, prosecutor, administrator or any other public official acting in contravention of this provision; and any person so damaged by the conduct of any such public official shall have a civil remedy therefore, exclusive of any criminal penalties imposed.” However, no such legislation has been passed and torture has not yet been criminalized under domestic law.

It should also be pointed out that Section 10.3, article 2 of the Code of Criminal Procedure allows for ‘permissible force’ in the carrying out of arrests. It states, “No unnecessary or unreasonable force shall be used in making an arrest, and the person arrested shall not be subjected to any greater restraint than is necessary for his detention.”¹⁴⁴ This provision, coupled with the absence of an anti-

¹⁴² LNP Duty Manual Section 1.2.3 and Section 1.3.

¹⁴³ LNP Duty Manual Section 2.1.3.1 and Section 2.1.3.2.

¹⁴⁴ Liberia Code of Criminal Procedure. Retrieved from: <http://www.refworld.org/docid/3ae6b5410.html>.

torture provision, is concerning and not in line with Liberia’s international human rights obligations.

5.4.3 Organisation and Functions of Law Enforcement

The Liberia National Police is a semi-autonomous agency under the Ministry of Justice and headed by an Inspector General of Police who is appointed by the Liberian president. The LNP is structured into a Bureau and departments, Divisions, Sections and Units, with its headquarters in the Liberian capital Monrovia and a presence in all regions and districts of the country. The structure of the LNP is set out in the NPA, and includes an LNP Policy Management board, which is mandated to propose ways to ensure the effective and efficient functioning of the LNP.

According to Section 22.89 of the NPA, the function of the LNP is to maintain law and order and the internal security of Liberia, including through:

- Preventing and deterring crime;
- Protecting fundamental freedoms and rights of individuals;
- Gathering, storing and analysing information relevant to the prevention, detection, investigation or prosecution of offenses;
- Protecting government property;
- Preserving public peace, including managing civil disturbances and crowd control;
- Responding to community security needs and promoting community policing;
- Enforcing traffic law;
- Providing a national forensic service;
- Engaging with other criminal justice institutions to prevent crimes; and
- Enforcing the Penal Law of Liberia.

The LNP Strategic Plan for 2015-2020 outlines the plans for reforming the LNP in terms of governance and accountability, operational effectiveness and efficiency, administration, and human resource development and training, among others. The adoption of the NPA was part of the LNP Strategic Plan, and further developments are expected to continue in the coming years.

5.4.4 Code of Conduct

Conduct of LNP officers is guided by the National Code of Conduct for All Public Officials and Employees of the Government of Liberia. The Code of Conduct was adopted through an act of legislature, making it legally binding on all public officials and government employees, including officers of the LNP.¹⁴⁵ The code provides detailed principles by which public officials must carry

¹⁴⁵ National Code of Conduct, available at: [http://www.emansion.gov.lr/doc/Act_Legislature_Prescribing_A_National_Code%20of_Conduct%20\(Final_Version%202014\).pdf](http://www.emansion.gov.lr/doc/Act_Legislature_Prescribing_A_National_Code%20of_Conduct%20(Final_Version%202014).pdf).

out their role, including human rights principles.

The Code of Conduct requires all public officials and government employees to "respect the human dignity and human rights of all persons without discrimination on the basis of race, sex, marital status, nationality, ethnic or national origin, physical, intellectual or other impairment on religious or political conviction or ideology."¹⁴⁶ This is an important legal requirement that applies to all law enforcement officers. However, it is regrettable that this provision doesn't include a prohibition of discrimination on grounds of gender or sexual orientation or a catch-all phrase prohibiting discrimination "on any grounds" as is found in the international human rights framework.

The Code of Conduct also requires government employees and public officials to respect the laws of the state¹⁴⁷, to act professionally and impartially at all times¹⁴⁸, and to take decisions solely in the interest of the public good.¹⁴⁹ In addition, it includes regulations relating to use of public funds, conflicts of interest, and gifts and bribes. It also regulates the personal behaviour and work ethics of public officials and government employees. These aspects of the Code of Conduct will be discussed throughout the chapter.

5.4.5 Community Policing

As part of the security sector reform process in Liberia, community policing was introduced to enhance the relation between citizens and police. The NPA reinforces the role of community policing, and includes in its list of functions of the LNP that its officers should "respond to community security needs and promote community policing."¹⁵⁰ Community policing is also included in the LNP Strategic Plan as an important area in need of reinforcement for effective policing. The plan includes a strategic outcome related to community policing: "A common trust and mutual understanding exists between citizens, communities, LNP and local authorities that encourages an exchange of information and enables joint problem solving on matters of security through a process that is in support of rule of law and in accordance with established laws of Liberia."¹⁵¹

However, as is the case in all areas of the LNP functioning, the budgetary restrictions create serious challenges in implementing the community policing policy, as there are simply not enough officers to carry out community policing in many places. In interviews conducted by DIGNITY with members of the LNP and civil society, community policing was highlighted as an important factor in improving relations between police and citizens, as citizens come to understand the workings of the police and the law through peaceful interactions with police officers. It was highlighted that community policing helps to engage citizens in taking responsibility for making the police better and maintaining law and order, as they become more aware of the ways in which they can help the police. Furthermore, through community policing, the police officers get to know the community they work in, and they are seen as more capable

146 Article. 3.8, An Act of Legislature Prescribing a National Code of Conduct for all Public Officials and Employees of the Government of the Republic of Liberia.
147 Article 4.2.
148 Article 4.6.
149 Article 3.1.
150 Section 22.89, National Police Act 2016.
151 LNP Strategic Plan 2015-2020, Section 4.4.2.4.

of taking care of the issues at hand in the local community.¹⁵²

5.4.6 Human Rights Training

Since the civil war and the arrival of UNMIL, the Police Training Academy (PTA) has focused on human rights education as an integral part of the program for the recruits. At the PTA all recruits have to do a course in human rights, but many other courses have been developed to teach the officers how to respect human rights, such as a course on how to employ force. If an officer is charged with misconduct they are obliged to repeat the human rights course before resuming their duties (often in addition to other disciplining).¹⁵³

5.4.7 Anti-Corruption Policies and Legislation

Corruption is a major problem in the LNP, and indeed in Liberia in general, despite the establishment of the Liberia Anti-Corruption Commission (LACC) in 2008. The LACC has the power to investigate and prosecute corruption cases, but it remains a weak institution due to lack of resources, among other issues. Lack of convictions of police officers on corruption charges contributes to a culture of impunity. In 2013, Human Rights Watch issued a damning report detailing the scale of corruption amongst the LNP titled No Money, No Justice: Police Corruption and Abuse in Liberia. According to the report, "police corruption [in Liberia] severely impedes proper administration of justice and denies Liberians their basic rights to personal security and redress."¹⁵⁴ Corruption manifests in the form of extortion at all stages of investigation, regardless of the kind of crime, and as such promotes abusive practices such as arbitrary arrest and detention.

So far a number of pieces of legislation and policy documents have been completed addressing the issue of corruption amongst Liberian police officers, and public officials more generally. The Penal Code of 1976 criminalises bribery, unlawful rewarding of public servants, unlawful compensation for assistance in government matters, and trading in public office under Chapter 12, subchapter D making clear that corrupt practices are considered criminal acts which may be prosecuted as such.¹⁵⁵ Corruption by law enforcement officers is also prohibited under the legally binding Code of Conduct for public officials, which provides detailed requirements for ensuring bribery and corruption do not take place. For example, Part IX of the code prohibits the giving and receiving of gifts or bribes, as well as the encouragement of giving or receiving gifts or bribes to any public official or his or her family that "could have any influence on his or her professional approach to issues and the discharge of his or her official duties."¹⁵⁶ The code prohibits the use of official positions to pursue private interests that may result in conflict of interest, as well as nepotism and preferential treatment in the performance of public duties, among others. The LNP Duty Manual also includes a chapter focused on regulations to prevent corruption. Chapter 3.2. prohibits corruption and calls for accountability for "all officers, including commanders, managers, supervisors, whether employed or appointed, whose acts or omissions constitute corrupt practices, possible criminality

152 interview with CSO-representative 07.04.16
153 Interviews with Liberian police officials and UNMIL representatives.
154 Human Rights Watch, No Money, No Justice: Police corruption and abuse in Liberia, 2013. Retrieved from: <https://www.hrw.org/report/2013/08/22/no-money-no-justice/police-corruption-and-abuse-liberia>.
155 Penal Code of Liberia, Section 12. Retrieved from: http://oceansbeyondpiracy.org/sites/default/files/Liberia_Penal_Law.pdf.
156

or whose acts or omissions serves to undermine public trust in the LNP.¹⁵⁷ The manual calls for investigations into all allegations of corrupt practices falling within Chapter 12 of the Penal Code of Liberia, which deals with offenses against government integrity.

There are other pieces of legislation in place to prohibit corruption, providing a comprehensive legal and policy framework to prevent and prohibit corruption. Despite this, corruption remains one of the most serious problems plaguing the LNP, if not the most, as well as the Liberian governmental structure more broadly.

According to a prominent Liberian lawyer interviewed by DIGNITY, “corruption is everywhere in Liberia.”¹⁵⁸ Although President Ellen Johnson Sirleaf was elected on a campaign promise to fight corruption, she and her administration have faced several allegations of corruption. They have, however, launched a campaign to inform the citizens about corruption and Monrovia is now full of billboards with messages such as “Undress corruption. Don’t hide it. Report all cases of corruption” or “Shine your eye. Corruption. Da everybody business” urging citizens not to pay bribes and to report incidents of corruption. However, little seems to be working and the citizens still perceive the government, and especially the police, as being extremely corrupt.¹⁵⁹

In interviews carried out by DIGNITY with CSO/NGO representatives, lawyers and the police regarding policing practices in Liberia, the issue of corruption was a recurring theme. Ranging from so-called petty traffic corruption to rumours of serious embezzlement by the police commissioner, corruption was framed as one of the biggest challenges facing the LNP. This claim is corroborated by the previously mentioned Human Rights Watch report, which states that the rampant police corruption is a threat to the protection of the human rights of the Liberian population.¹⁶⁰

However, the police are not necessarily perceived as villains because of their well-known corrupt practices. Rather, there seems to be a tacit understanding regarding why the police are involved in such corrupt practices, and those interviewed by DIGNITY time and again made excuses for these practices. For example, individuals explained that police must engage in corrupt practices because “their salary is too low,” “they don’t have transportation,” “they have families to feed,” and “there are many good guys in the police, but the institution is ruining them.” This does not necessarily indicate that corruption is an accepted practice as such, but rather points to the fact that corruption is not an isolated event, but a highly context-based practice that is fostered by certain conditions and has become integral to daily life for many Liberians. However, the police institution is not seen as entirely bad, as one interviewee told DIGNITY, “the police is not a bad institution, but there are many bad officers.” As such neither the institution nor the officers are seen as entirely bad, but rather, corruption is seen as endemic to the Liberian society and thus a part of all institutions and everyday life. This is so much so that an employee from the Liberian Ministry of Justice interviewed by DIGNITY stated that corruption is also the responsibility of the citizens, who – by committing crimes, traffic violations, and the like – enable the police officers to engage in corrupt practices. He cited traffic corruption as an example: if somebody is stopped by the police, the person will often offer to pay a bribe instead of a fine as bribes are cheaper than the official fine, and the police will often agree to this. Thus, both are breaking the law and choosing not to pay the official fine which enables police corruption. However, the motorcyclists interviewed for this report stated that they felt targeted by the police even though

157 Article 3.2, LNP Duty Manual.

158 Interview X/04/2016, Monrovia

159 Transparency International Corruption Index 2015.

160 HRW, 2013

they did not commit any crimes. Regardless, the statement from the Ministry of Justice official regarding the shared responsibility for corruption points to a significant problem of legitimacy: that the lines between the legitimate and the illegitimate are blurred and that corruption in some cases is seen as understandable, and hence legitimate.

This blurring between the illegitimate and legitimate is epitomised in the practice of ‘German payday’, as recounted by a victim of police violence who was himself a target of this practice.¹⁶¹ ‘German payday’ is when officers, often on a Friday, go to the market to raid the stalls where people trade and exchange. The raids can be justified, as the traders often do not have permits, and hence they are trading illegally. However, the police officers do not issue fines. Rather, they take the traders’ goods to the police station and demand bribes from the traders for the return of their goods. That way the police officers can pocket the bribes and use them to buy food and other items for the weekend. While they acknowledged that this practice is highly problematic, the victims of police violence and targets of the so-called ‘German payday’ still expressed understanding for the police officers responsible, stating “they just want to do nice things for their families.”

The pervasive character of corruption in Liberia is especially interesting when contrasted with the extreme focus on combatting corruption. In all interviews conducted by DIGNITY, corruption was highlighted as one of the biggest challenges facing Liberian society, but at the same time people expressed understanding for corrupt police officers and other government officials. Billboards at the side of the road, and signs at the police station saying “officers are not allowed to take money for filing a police report,” seem to have little effect. A source in the Ministry of Justice stated “corruption pays off,” and went on to explain the different ways in which police officers could make money through corruption. Several interviewees stated that police officers often skip work to go to local communities, wearing their uniform, to settle local disputes and act as mediators or judges. This shows that the police do carry a certain amount of authority and are respected in local communities although the perception of them is generally very bad. At the same time these stories shape the public image of the police as greedy and corrupt, and may thus serve to undermine their authority in the long run. However, it seems that little will change as long as corruption pays off and the highest levels of government fail to set an example and continue engaging in corrupt practices.

5.5 Oversight of the Police

According to a UN report from 2012, despite significant efforts to develop the security sector in Liberia, there was still much work to be done to strengthen the weak and ineffective governance and accountability mechanisms of security institutions.¹⁶² There are a number of bodies in place to ensure oversight of the LNP, with varying structures and setups, as described below.

161 Case story of a victim of police violence recorded by a LAPS employee in Samuel Doe April 11th 2016.
162 UN Security Council, “Special Report of the Secretary-General on the United Nations Mission in Liberia,” S/2012/230, 16 April 2015.

5.6 Office of the Ombudsman

The Code of Conduct establishes the Office of the Ombudsman, which is an independent, autonomous body, responsible for enforcement, oversight, monitoring and evaluation of adherence to the Code of Conduct. The Ombudsman's Office is mandated to receive and investigate complaints regarding violations of the Code of Conduct by public officials and government employees, and to submit the results of investigations to "relevant government agencies" where the investigation leads to a determination of guilt.¹⁶³ As such, the Office of the Ombudsman may investigate allegations of police misconduct, but it is not clear from information available whether or to what extent the Ombudsman plays or is able to play this role.¹⁶⁴

5.7 Professional Standards Division

The Professional Standards Division (PSD) of the LNP was established to "serve as the foundation for effective discipline." Its purpose was to ensure oversight of the police, and according to a document headed PSD Policy and Procedures, "the PSD shall have primacy overall within the LNP to investigate cases of misconduct." This document, adopted by the Director of the LNP and the Liberian Minister of Justice in 2010, provides the mandate and operational procedures for the PSD. It sets out the division's main duties and responsibilities as:

- To receive, record and investigate any complaint or information alleging LNP misconduct;
- Inspect, assess and evaluate LNP systems;
- Maintain, track and report on all cases of police misconduct, including the incorporation of a mechanism for the distribution of rules and regulations, policies and procedures and provide for periodic review and revision as necessary; and
- Ensure that sufficient opportunity for redress of any imposed sanction is provided to subject LNP officers.

The Policy and Procedures document gave PSD officers the authority to interview any member of the LNP, or any witness or complainant, and to review records and reports of the LNP relative to an investigation. If the preliminary investigation of the PSD establishes that a criminal offense has occurred, the PSD will, in consultation with the LNP director, refer the case to the Criminal Services Division of the LNP within 24 hours of such a finding. The PSD is directed to give precedence to cases alleging a criminal violation, and the operational procedures also stipulates that whether or not a criminal case was substantiated there should be an administrative investigation.

The fact that the investigation of criminal complaints is carried out by the regular LNP, that is, the Criminal Services Division (CSD), and not by the PSD which is mandated to provide oversight of the LNP, is highly problematic, as the CSD was part of the main LNP structure and exercised no

¹⁶³ Code of Conduct, paragraphs 12.1 and 12.2.

¹⁶⁴ After completion of the research President Sirleaf signed an executive order that strengthens and clarifies the power of the Ombudsman.

independence from it, meaning police officers would be investigating allegations of criminal activity against their peers. The PSD itself is also not an independent organ, but also part of the police institution. Interestingly, despite this, since the establishment of the PSD in 2010, there was a significant increase in public perception of accountability within the police force.¹⁶⁵ Civil society representatives interviewed by DIGNITY also expressed high levels of trust in the PSD, and while they would have preferred it to be independent from the police, they did not consider the dependency to be a problem in relation to impunity and accountability.

DIGNITY had the opportunity to interview the director of the PSD, who mentioned that the lack of independence from the police institution could be a problem, but his overall impression was that it was a trusted institution and considered credible by the public. He interpreted the increasing number of complaints the PSD received as evidence of this trust. In 2015, the PSD received 768 complaints and by March 2016 they had already received 195 complaints. He explained that a period of improved accessibility to the PSD had played a big role in this increase. In 2014, the PSD launched a text message service which allowed citizens to send a text message to the PSD making a complaint, and a PSD officer would then call the complainant back to take their complaint in full. As phone cards were relatively expensive, this initiative was seen as a great success, as confirmed by representatives of local civil society organizations interviewed by DIGNITY. Regrettably, the funding for the text message service ran out in May 2016. It was financed by an international organization and not the Liberian state. This points to a larger problematic trend within the LNP, whereby most of the funding for such initiatives, as well as office supplies, computers, furniture and other such equipment comes from international bodies such as UNDP or embassies such as the US Embassy, rather than from the state budget.

The main challenge of the PSD, as expressed by the director himself and in interviews with others, was a lack of funds. In general, the police budget had shrunk over the past years and the PSD were badly affected by these budget cuts. Although the PSD has been decentralized to other parts of Liberia, they are still not as accessible as they would have liked. In 2016 there were 19 PSD officers in Monrovia and 20 in the rest of the country. As a result, when filing a complaint people often had to travel far, not only to file the complaint, but also to follow up on the case, which is both time consuming and expensive. In 2015, 131 cases of 768 were not even investigated because the complainant had not been able to follow up with the PSD on the case.¹⁶⁶

The limited funding impacts severely on the PSD's ability to function. Like the rest of the police force they lack vehicles, uniforms, investigative tools, and staff. According to the PSD Director, by March 2016, 186 out of 768 complaints filed in 2015 were still under investigation. To speed up the process of investigation, PSD officers felt obliged to go off-procedure by asking a complainant to write up the investigation report him/herself, because the officers did not have sufficient time to do this. According to the PSD Policies and Procedures, did their preliminary investigation should be completed within 21 calendar days, but the fact that in 2016 the PSD were still investigating cases filed in 2015 made it clear that this was impossible in the circumstances. The director of the PSD explained that the long processing time was also highly inconvenient for complainants, who often lacked the time and money to keep visiting the PSD office in Monrovia to follow up on the case.

The PSD has an important function in terms of providing oversight to the LNP. However, as described above, its powers are severely curtailed, both by a mandate that stops short of investigating criminal

¹⁶⁵ HRW Report.

¹⁶⁶ Interview with Director of the PSD.

offenses, and by its lack of resources. For these reasons, the PSD is failing to provide meaningful and effective oversight of police conduct.

5.8 LNP Civilian Complaints Review Board

A new element entered the equation for the PSD six years after the Policy and Procedures document. The National Police Act of 2016 established the Liberia National Police Civilian Complaints Review Board, which is envisaged to provide civilian oversight of the PSD, even as the PSD oversees the LNP. The establishment of civilian oversight of the police is included in the LNP Strategic Plan 2015-2020, which states the following strategic outcome: "Organise well-defined and articulated organizational norms, practices, and core values within the LNP that provide for consistency in approach to duty and adherence to democratically principled policing values, strengthened through the development and realization of a civilian oversight body."¹⁶⁷

According to the NPA, the LNP Civilian Complaints Review Board is to be chaired by the president of the Liberian Bar Association. It should also have on it a representative of the Minister of Justice, a representative of the Minister for Internal Affairs, the chair of the Independent National Human Rights Commission, the president of the Federation of Liberia Youth, the chair of the National Civil Society Council, and the president of the Liberia National Law Enforcement Association. The board is mandated to "receive, process and determine any complaint made against the Liberia National Police, any Police Officer or Civilian Personnel."¹⁶⁸ Under the NPA, the PSD is required to notify the board of a complaint before proceeding with its preliminary investigation, and if a complaint comes directly to the board it is to forward it to the PSD for investigation. The PSD in turn is to submit its investigation report with recommendations to both the board and the Inspector General of Police. The board is also mandated to receive a report on a quarterly basis from the Inspector General of Police regarding actions taken in response to recommendations from the PSD.

While the establishment of the Civilian Complaints Review Board by the NPA is an important development, there are serious and legitimate concerns regarding the limitations the board will face in its actual functioning due to the same budgetary restrictions that plague all other aspects of the LNP, as described above. At the time of this writing, it is unclear whether the board has yet been formally constituted and begun its functioning. In August 2016, UNMIL was in the process of providing expert assistance in the drafting of regulations and administrative instructions for the Civilian Complaints Review Board, indicating that steps were being taken by relevant parties to bring it into being. The board could go a long way towards mitigating concerns about the PSD's lack of independence, but whether this will be the case in reality is yet to be seen.

5.9 Human Rights-Based Policing in Practice

The general perception among the public in Liberia is that the police are not to be trusted. In interviews people described the police institution as malfunctioning, highly politicized, and corrupt. The lack of trust in the police was especially evident in relation to the UNMIL scaling

¹⁶⁷ Section 4.4.1.8., LNP Strategic Plan 2015-2020.

¹⁶⁸ Section 22.88, National Police Act 2016.

down. According to a source in the UN people expressed an immense fear that violence would resurface and that the police would take advantage of their power once the UN monitoring stopped¹⁶⁹. These fears intensified in February 2016, when three police officers were accused of aiding in armed robberies¹⁷⁰. Several people referred to this incident when explaining why the police could not yet be trusted and why the country was not ready for the UNMIL to scale down.

In addition to the distrust and fear, many citizens felt the police were not even public servants, but rather that they only served those who paid them to investigate their cases. This problem was highlighted in the 2013 Human Rights Watch report No Money No Justice, which details cases of police officers charging money for transportation and investigation of criminal cases¹⁷¹. This – as well as a perception that the police force is highly politicized, serving only the elite and especially the wishes of the president – has led many (especially the poor) to stop reporting crimes. Thus, when the crime rate in Monrovia is said to be lower than in European cities¹⁷², it should be taken into consideration that most crime is not reported.

These issues have led to a situation where the police have little legitimacy in the eyes of the public. Firstly, the public is turning increasingly to parallel power structures, relying on alternative justice systems (often represented as traditional 'bush law'), and vigilante groups to protect them, settle disputes and investigate crime. According to a source in the UN the primary problem of using bush law is that it undermines the rule of law and democracy, as it gives power to people who were not democratically elected. Secondly, violence against police is on the increase. Locals have started interfering to help suspects when police make arrests, and there have been incidents of torched police stations, and several of personal aggression towards police officers¹⁷³.

Despite all of this, in most interviews police were not represented as 'bad guys', but as good guys who work under very bad conditions. The average salary for a police officer is around 80 USD, which is not enough to sustain a family in Monrovia. In addition to this the officers have to pay for their own uniforms, which is why many officers have only one. In general, the budget for the police is extremely low¹⁷⁴; as mentioned in the PSD section above the police lack vehicles, means of communication and tools for investigation, which has a devastating effect on their capacity to solve crimes and on the public's perception of their professionalism.

5.10 Use of Force and Firearms

With regard to regulations concerning the use of force and firearms, the LNP Duty Manual refers to the LNP Use of Force Policy of April 2005 and the LNP Firearms and Other Weapons Policy. Despite concerted efforts, DIGNITY has been unable to obtain copies of these policies to assess their compliance with international standards, and therefore this section is focused on

¹⁶⁹ Interview with UNMIL representative, April 2016. See also Front Page Africa, "Liberian National Police, Bureau of Immigration Acts Ratified," 17 March 2016, retrieved from: <http://allafrica.com/stories/201603180629.html>.

¹⁷⁰ Ibid. Armed robberies are very common in Monrovia, but rarely reported because police are not trusted and because they often demand money to investigate.

¹⁷¹ This claim was corroborated in interviews with CSO representatives and police themselves.

¹⁷² Interview with UNPOL

¹⁷³ Interview with NCHR DATE

¹⁷⁴ Interview with UNPOL and PSD

the practice related to the use of force and firearms, as reported to DIGNITY through interviews conducted in Liberia in April 2016.

The use of force is taught to LNP offices in training with the principle of 'proportional violence'. However, when asked what 'proportionality' meant in practice, interviewees both within the police and outside it had difficulties explaining it. The most common response was that proportionate use of force was using the force needed to make an arrest, and if an officer used more violence than necessary that would be considered excessive use of force. As the aim of the interviews was to shed light on the use of violence, this was followed up with questions regarding the circumstances in which violence would be necessary in making an arrest. Interviewees responded by saying that this would be only 'proportional force'. The tautological explanations revealed that the interviewees were not too critical about the police's use of force, but trusted that the police officers themselves knew when violence was proportionate or not. Only a handful of interviewees – mainly victims of police violence and a few CSO representatives – described excessive use of force by police as a regular practice.

At the Police Training Academy (PTA) the police officer in charge of educating the recruits in the use of force, who was interviewed by DIGNITY, gave a detailed explanation of the use of force in relation to proportionality. It was highlighted that the police officers are only allowed to use slightly more violence than the suspect they are trying to arrest. After using force, the police officer is required to write an After Action Report justifying the use of force and reflecting upon the choices made during the incident. The interlocutor also pointed out that force is used most often during demonstrations and towards people under the influence of either drugs or alcohol who resist arrest.

Regarding the use of firearms, after the civil war all ordinary police officers were stripped of their arms, leaving only two specially trained units – the Emergency Response Unit (ERU) and the Police Support Unit (PSU) – to carry firearms. All other police officers are armed with pepper spray and batons, and if needed they can call PSU or ERU for backup. At the PTA all officers are educated in the use of force, and the PSU and ERU officers receive additional training in the use of firearms.

5.11 Dispersal of Assemblies

The National Police Act of 2016 outlines the role of the police in maintaining public order, which is largely focused on the police response to demonstrations. Section 22.91 begins by detailing the steps that must be taken by civilians to request permission to hold a demonstration. These points are followed by: "It shall be the responsibility of every Police Officer to take all such steps as are reasonably necessary in any public place:

- To assist in the proper conduct of any special event by directing the route of such event to prevent obstruction of pedestrian or vehicular traffic; and
- To disperse crowds at any special event where he or she has reasonable grounds to believe that a breach of the peace is likely to occur or if any breach of the peace has occurred or is occurring in order to prevent violence, restore order and preserve the

peace."¹⁷⁵

The NPA 2016 does not, however, include any detail regarding the circumstances in which officers may use force in dispersing public assemblies, and neither does it refer to the need to protect the human rights of those in public assemblies when carrying out dispersal efforts. It is presumable that these standards could be contained in a separate policy document applicable to the LNP, but DIGNITY was unable to find such a policy document to verify this. As such, the lack of clear guidelines and regulations requiring LNP officers to ensure the protection of human rights, limit the use of force and reserve it for the last resort after ample warnings, is a glaring departure from international standards for police conduct.

According to local attorneys and CSO representatives interviewed by DIGNITY, demonstrators are considered to be one of the groups most vulnerable to police violence. In the Liberian media, there are often news stories about police brutality in relation to demonstrations. For example, in late February and early March 2016, there were several violent encounters between police and demonstrators outside the Temple of Justice (the Liberian Supreme Court), where demonstrators often rally. These clashes resulted in the police being accused of brutality by activists.¹⁷⁶

Legitimization for police intervention in demonstrations often stems from the fact that demonstrations are held without the required permit. Police are called to disperse the rallies and in this process, they often meet resistance and, in turn, call on the better trained and more heavily armed PSU for backup. The legal framework regarding demonstrations was criticized in two interviews carried out by DIGNITY with legal counsellors, who believe that the need to obtain a permit before demonstrating hinders people from practicing their democratic rights. In this way, the police are seen not so much as acting unlawfully as upholding an undemocratic law.

5.12 Conclusion

The extensive combined international and domestic efforts to implement reforms of the security sector in Liberia have led to a number of significant developments so far, not least the adoption of the new police legislation, the National Police Act of 2016, as well as the adoption of the Strategic Plan 2015–2020. The NPA provides clarity regarding the structure and functioning of the police, and makes reference to human rights standards as much as can be expected in such a piece of legislation. Where the references to human rights standards and related obligations of police are lacking is in the supporting operational and procedural manuals applicable to the Liberian National Police. The extent of this is unclear, as many policy documents regulating police activity, such as the use of force policy and the use of firearms policy, are not easily accessible and therefore have not been examined as part of this report.

¹⁷⁵ Section 22.91, National Police Act of 2016.

¹⁷⁶ See, for example, AllAfrica, "Liberia: Tensions Rising," 1 March 2016, retrieved from: <http://allafrica.com/stories/201603072224.html>.

Another problematic area is the lack of effective oversight of the police, despite the existence of the Professional Standards Division, due to its lack of independence from the LNP structure, as well as the fact that alleged criminal acts committed by members of the LNP are investigated by other LNP divisions, rather than by an independent or even semi-independent body. This problem is likely to be somewhat mitigated by the establishment of the Civilian Complaints Review Board; however, the extent of this is yet to be seen as the board does not yet appear to be fully operational at the time of this writing.

One of the biggest challenges facing the LNP, however, is the lack of resources—both human and financial. This contributes to high levels of corruption within the LNP, an issue that plagues most areas of the Liberian government structure, and in turn reduces the levels of protection that citizens can expect from those mandated to provide them with protection.

Combined, the lack of a clear and robust human rights protection legal and policy framework and the lack of effective oversight indicate that Liberian legislation is not fully in line with international standards. It is also clear from the interviews carried out by DIGNITY that these factors, combined with widespread corruption in the LNP, severely undermine the ability of police to ensure the protection of human rights in Liberia.

6. Conclusion and Recommendations

In this study we have explored the legal and policy framework regulating the work of the police in South Africa, the Philippines and Liberia, and its compliance with international human rights standards. The main objectives have been to bring to light what we have referred to as non-custodial legal policing frameworks and practices. As we have argued elsewhere,¹⁷⁷ torture and ill-treatment are frequent occurrences among the urban poor in their own neighbourhoods. Hence, it is imperative that we explore the legal means at our disposal, the gaps in them and their lack of implementation in everyday non-custodial policing. This will allow human rights organizations – including ourselves – the means to target our work around legal and institutional reform in areas where we have been less present. Legal frameworks are not, as the study also reveals, the fix-it-all, magical solution, but they are central for all human rights interventions in the three countries under review, as well as in all other contexts.

The study is enlightening in what it reveals about how states and police agencies choose to regulate the police force. A comparative view exposes significant differences in the level and form of compliance between the domestic legal and policy framework with international standards relating to policing in each country. At one end of the spectrum, the Philippines has an extremely comprehensive legal and policy framework for the police which includes robust and detailed regulations and policies aimed at ensuring that police uphold and protect international human rights standards. This includes a range of codes of ethics and conduct, including the full and legally binding application of the UN Code of Conduct for Law Enforcement Officials. The South African context is similarly robust, though to a slightly lesser degree. At the other end of the spectrum, the legal and policy framework in Liberia is much less explicit in the regulations it imposes on the police for the protection and promotion of such standards. Human rights standards are mentioned in vague and general terms, and there is little explicit guidance or regulation for police officers on how they should carry out their policing functions while ensuring robust protection and promotion of the human rights of civilians. All three countries reflect their different historical trajectories. Liberia has relatively recently emerged from a bloody civil war and is still in transition towards democracy. Philippines and South Africa, both much wealthier countries, have also had a longer time, and have emerged from historical processes that rendered human rights regimes central as oppositions to racist and dictatorial governance. Both countries also benefit from vibrant civil societies that have been central in pushing progressive human rights agendas.

In the report, we have identified a number of different legal gaps between international law and domestic law in the three countries, as well as areas where implementation clearly falls behind the legal frameworks. It serves no purpose to repeat the conclusions here; one example will suffice to illustrate the larger point. In all three settings, the police oversight mechanisms function with varying degrees of effectiveness: in South Africa, the independent police oversight body, combined with the courts, provides robust oversight, and the establishment of the Independent Police Inspectorate Division to hold police officers responsible for misconduct has had a deterrent effect. In the Philippines, there is a comprehensive oversight system in place, with many layers and entry-points. While on the one hand this bolsters police oversight, on the other hand it complicates matters and creates confusion as to where complaints of police misconduct

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Jensen, S, T. Kelly et al. (forthcoming) "Torture and Ill-Treatment Under-Perceived: Human Rights Documentation and the Poor", accepted for Human Rights Quarterly. See also T. Kelly et al (2016) RESEARCH BRIEF: Documenting Torture and Ill treatment Amongst the Poor <https://torturedocumentationproject.files.wordpress.com/2014/05/torture-under-perceived.pdf>

should be filed and how they should be handled. In Liberia, the Professional Standards Division is part of the policing structure, and is not mandated to conduct investigations into alleged criminal acts by police officers, raising serious concerns as to whether investigations into police misconduct are investigated with sufficient independence. Hence, strategies to address issues of police oversight must take different forms and address different issues in the three countries. In Liberia, work must be done to improve police oversight mechanisms. In the Philippines, work might be of more benefit if it addressed contradictions and confusions in the system to allow simpler oversight. In South Africa, the struggle is to strengthen the system in place and work with the oversight mechanism to improve police accountability.

Despite these differences, there is commonality in the three settings: namely, that the legal and policy framework for policing in general has little bearing on the way policing is carried out. In the Philippines, which has the strongest legal and policy human rights framework for policing, recent months have seen a dramatic rise in the number of extrajudicial killings, with widespread impunity and in some cases acquiescence from police. But the problems are not just of recent nature. Despite the progressive legal frameworks, corruption is rampant and policing often falls under the control of political players – in fact, the police are sometimes part of local political machines. Furthermore, extrajudicial killings have been happening since at least the Marcos dictatorship era. On top of this, throughout the past century, the Philippine republic has seen a number of insurgencies that continue to militarize policing, despite attempts to achieve the opposite. In South Africa, police brutality and violence continues to take place despite strong oversight mechanisms and explicit human rights legal and policy frameworks. In no small measure this is due to what is considered a rampant crime wave where the police have been seen as the thin blue line separating the country from absolute chaos and where human rights have been considered in many quarters as hamstringing the police.¹⁷⁸ Furthermore, South Africa is still one of the most unequal societies in the world, despite great transformations in its class composition (more non-whites in elite positions). This has led to a perpetual war between those who have and those who don't with the police most often defending the position of the rich. Finally, corruption is still rampant in all parts of the police from the top echelons to traffic cops in urban centers.¹⁷⁹ In Liberia, the police were all but destroyed by the war as military factions took over. The force's professional image remains severely damaged, and despite justice sector reforms, this continues to hamper police legitimacy.¹⁸⁰ Furthermore, as our interviews show, the financial situation of the police is debilitating to their functionality. Apart from the ensuing lack of professionalism and impaired ability to implement legal frameworks, this has also led to very high levels of corruption. In spite of strong anti-corruption legislation and policies, corruption continues to be the single biggest challenge faced by the Liberia National Police.

The conclusion here is that while the legal and policy framework is important, it is insufficient on its own to ensure the full protection and promotion of human rights by police officers. However, this does not mean that legal and institutional reforms and human rights work should not be carried out. In the remainder of this section, we briefly outline a number of recommendations organized around gaps between international and domestic law; lack of implementation; and the relation between legal work and other forms of intervention in poor, urban neighbourhoods.

178 Steffen Jensen (2014) "Conflicting Logics of Exceptionality: New Beginnings and the Problem of Police Violence in Post Apartheid South Africa", *Development and Change*, 45, 3: 458–478.

179 For street corruption see for example David Bruce (2012) "The Law for Sale: The Endemic Corruption in the Johannesburg Metropolitan Police Department. Johannesburg": *Corruption Watch*. For corruption among top officials, see the corruption case against former commissioner Jackie Selebi in Adrian Basson (2010) *Finish & Klaar: Selebi's fall from Interpol to the Underworld*. Tafelberg: Cape Town.

180 Bruce Baker (2009) "A Policing Partnership for Post-War Africa? Lessons from Liberia and Southern Sudan", *Policing and Society*, 19.4, 372-389.

These recommendations are borne out of our research and work under the Community Led Interventions project, and notably our awareness of the need to focus on torture and ill-treatment taking place in non-custodial settings, which has often not received attention due to the focus on torture and ill-treatment in places of detention. Our aim with these recommendations is to encourage other organisations to take steps to examine the issue of torture and ill-treatment in non-custodial settings.

Recommendations to civil society:

Take steps to raise awareness about the issue of torture and cruel, inhuman and degrading treatment or punishment in non-custodial settings, such as in daily interactions between the police and public in the lead-up to arrests or in the dispersal of public assemblies. Such awareness raising requires a shift in the traditional thinking around torture and ill-treatment as phenomena which take place only in places of detention, and it may therefore be useful to conduct research to determine the scope and scale of torture and ill-treatment taking place in non-custodial settings, and to work to identify creative and effective ways to bring this issue more attention from human rights bodies. It is only through raising awareness that this issue will begin to receive adequate attention from key human rights bodies and mechanisms.

Address gaps between domestic and international legal and policy frameworks relating to torture and ill-treatment taking place outside of custodial settings where they exist. Domestic legal and policy frameworks should be assessed, and steps should be taken, for example through advocacy efforts and dialogues with authorities, to ensure that relevant international human rights standards are accurately reflected in such documents. This should include creatively looking at policy documents applicable to the police, such as anti-corruption standards and codes of conduct, to determine how they could be amended to better reflect human rights standards for policing.

Advocate for the implementation of international human rights standards through domestic legal and policy frameworks. Through advocacy and dialogue with authorities, work to improve implementation of relevant domestic legal and policy frameworks relating to policing. This could include finding creative ways to use policy documents, such as codes of conduct and policing manuals, to work towards greater respect for international human rights standards. Particular attention should also be paid to strengthening oversight mechanisms which can play a significant role in ensuring better implementation of international standards through the application of domestic legal and policy frameworks.

The Global Alliance is a strategic alliance established in 2014 between likeminded civil society organisations working towards building a global alliance of communities against torture and urban violence. We conduct country-based, as well as collaborative intervention and knowledge generating projects across partners, focusing on countering authority-based violence in poor urban neighbourhoods.

The Global Alliance consists of four partner organizations from four different countries:



CSVr - The Centre for the Study of Violence and Reconciliation, South Africa;
www.csvr.org.za



Balay Rehabilitation Center, the Philippines;
www.balayph.net



LAPS – Liberia Association of Psychosocial Services, Liberia;
www.lapsliberia.com



DIGNITY – Danish Institute Against Torture, Denmark;
www.dignityinstitute.org